A COMPLETE COLLECTION OF THE LORDS' PROTESTS, FROM THE FIRST VPON RECORD, IN THE REIGN OF HENRY THE THIRD, TO THE PRESENT TIME; WITH A COPIOVS INDEX.

To which is added,

An HISTORICAL ESSAY on the Legiſlative Power of ENGLAND. Wherein the Origin of both Houſes of Parliament, their antient Conſtitution, and the Changes that have happened in the Perſons that compoſed them, with the Occaſion thereof, are related in chronological Order. And many Things concerning the ENGLISH Government, the Antiquity of the Laws of ENGLAND, and the Feudal Law, are occaſionally illuſtrated and explained.

VOLVME THE SECOND.

LONDON:
Printed in the Year MDCCLXVII.

LORDS PROTESTS.

Die Martis 13° Aprilis, 1725.

A Bill for regulating Elections within the city of *London*, and for preserving the Peace, good Order and Government of the said City, being read the third Time,

It was proposed to ask the Opinion of the Judges, whether this Bill does repeal any of the Prescriptions, Privileges, Customs or Liberties of the City of *London*, restored to them, or preserved by the Act passed in the second Year of King *William* and Queen *Mary*, for reversing the Judgment in a *Quo Warranto* against the City of *London*, and for restoring the said City to its ancient Rights and Privileges?

Which being objected to, and Debate had thereupon,

The Question was put, whether the Judges shall deliver their Opinions upon the said proposed Question?

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It was resolved in the Negative.

Dissentient

1*st*, Because it being enacted and declared by the Act mentioned in the Question, That the Mayor, Commonalty, and Citizens of *London*, shall for ever hereafter remain, continue, and be, and prescribed to be, a Body-Corporate, *in re facto & nomine*, by the Name of Mayor, and Commonalty and Citizens

of the City of *London*, and ſhall (as by Law they ought) peaceably enjoy all and every their Rights, Gifts, Charters, Grants, Liberties, Privileges, Franchiſes, Cuſtoms, Uſages, Conſtitutions, Preſcriptions, Immunities, Markets, Duties, Tolls, Lands, Tenements, Eſtates, and Hereditaments, whatſoever, which they had (or had a Right, Title or Intereſt in or to) at the Time of giving the ſaid Judgment; and we being apprehenſive, that the Alterations made by this Bill in the Conſtitution of the Common-Council, and other ancient Rights, Franchiſes, and Preſcriptions of the City, may utterly aboliſh the ancient legal Title of the City to their Rights, Franchiſes, Preſcriptions, and Conſtitutions in the Particulars contained in the ſaid Bill; and may, in Conſequence thereof, work a total Change of the whole ancient Conſtitution of the Corporation of the ſaid City, or greatly confound or prejudice the ſame, which has ſtood for ſo many Ages upon the Foundation of its ancient Title, Right, and Preſcriptions, confirmed by many Grants made by his Majeſty's Royal Progenitors, and by many Acts of Parliament; all which were reſtored ſo ſoon after the happy and glorious Revolution, and which have been peaceably enjoyed to the preſent Time: We are of Opinion, that the Solution of the ſaid Queſtion, by the Judges, muſt have tended greatly to the neceſſary Information of the Houſe, and to their better Judgment, upon a Bill of ſo great Importance, as well as to the Satisfaction and Quiet of the Citizens of *London*, who, ſo far as we can collect from the Petitions againſt the Bill, are greatly alarmed at the Conſequence thereof; and we are of Opinion, that it was the more neceſſary, and the more conſiſtent with the Wiſdom of this Houſe, to be informed of the Law, by the Judges, upon the Queſtion propoſed, becauſe we don't find in this Bill any Saving

or

or Confirmation of any of the ancient Titles, Rights, Prescriptions, Privileges, or Franchises of the said City, restored to them by the former Law.

2dly, We think the Question ought to have been proposed to the Judges, the rather because the Opinions of several Counsel were admitted to be read, at the Bar of the Committee of the whole House, in Favour of the said Bill.

Bathurst,	*Bingley*,	*Gower*,
Lechmere,	*Strafford*,	*Litchfield*,
Coventry,	*Abingdon*,	*Montjoy*,
Wharton,	*Bruce*,	*Arundell*,
St. John de Bletsoe,	*Foley*,	*Fra. Cestriens'*.
Bristol,		

Then, after long Debate,

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The Question was put, whether this Bill, with the Amendments, shall pass?

It was resolved in the Affirmative.

Dissentient'

1st, Because we apprehend, that the Penalty of Two hundred Pounds upon the Officer presiding at Wardmote-Elections, as well as at Elections even for Members of Parliament, is so small, that it may be construed into an Indemnification, and be looked upon rather as an Encouragement than a Restraint by a wealthy, partial and arbitrary Officer; at least, we are of Opinion, that such a one will not be sufficiently deterred by it from returning such Candidates as he likes, rather than such as the City chuses; and if ever that melancholy case should happen, we fear neither the Candidates nor Voters will be able to find an effectual Method of doing Justice for so flagrant an Injury, either to themselves, or to the Nation.

2dly, Because we cannot but think, from the Evidence given at the Bar, that this Bill will take away from many Citizens their Right of voting in

Wardmote-Elections, by giving an Exclusion to all that inhabit Houses under Ten Pounds a Year, even tho' they pay all Parish-Duties, or Thirty Shillings in Lieu of them; which we conceive an unjustifiable Hardship upon those who may have long enjoyed that Right, and have had no Crime objected to them, much less proved, as we think it ought to be, before they can justly be deprived of it.

3dly, Because, by this Bill, no Act is to pass in Common-Council for the future, except what relates to the Nomination of some few Officers, without the Assent of the major Part of the Mayor and Aldermen present in such Common-Council; which, we conceive, will give too great an Addition of Power to the Mayor and Aldermen, who have already many and large Prerogatives incontestably allowed them by the Commonalty of the City; and tho' the Council for the Bill insisted that the Mayor and Aldermen had anciently that Right which this Bill establishes, yet the Proof of that Right appeared to us so remote and obscure, that we own ourselves too short-sighted to discern it; and on the other Side it appeared plain to us, that even from the Time of incorporating the City to this present Time, such a Claim has very seldom been made, and that it has never been acknowledged; and therefore, we conceive, if there be any Foundation for such a Right, which we are far from thinking there is, the Dispute should be decided first in the inferior Courts of Justice, and rather determined in *the House of Lords* upon an Appeal, than ended by an Act of Parliament; which seems to us such a Method of determining Controversies of this Nature, as may prove of the most dangerous Consequence to the Rights and Properties of all the Subjects of *Great-Britain*.

4thly,

4thly, Because this Bill abolishes the Custom relating to the Distribution of the personal Estates of Free-Citizens, which is a Custom not only of great Antiquity, but seems to us to be wisely calculated for the Benefit of a Trading-City, and has been acquiesced under for so many Years, without the least Complaint of any one Free-Citizen that we ever heard of; that the taking it away in this Manner cannot but appear to us too rash and precipitate, and may too probably, in our Opinion, be very detrimental to the true Interest of this ancient, populous, loyal, and hitherto flourishing City, the Preservation of whose good Order and Government the Bill itself very justly and judicially allows to be of the greatest Consequence to the whole Kingdom.

Scarsdale,	*Compton*,	*Wharton*,
Strafford,	*Bruce*,	*Fran. Cestriens'*
Bristol,	*Craven*,	*Arundell*,
St. John de Bletsoe,	*Westen*,	*Abingdon*,
Boyle,	*Montjoy*,	*Litchfield*,
Bathurst,	*Foley*,	*Gower*,
Bingley,	*Exeter*,	*Uxbridge*.
Berkely of Stratton,		

For the foregoing Reasons, and these that follow, *viz.*

1st, Because we are of Opinion, that the several great Alterations made by this Bill in the ancient Constitution of the Common-Council, and other the Rights, Franchises and Prescriptions of the City of *London*, will, if passed into a Law, entirely subvert and destroy the ancient Title which the City at this Time lawfully claims, and has, thereto; and will introduce and enact a new Constitution upon the City hereafter to be claimed and enjoyed, not upon the Foundation of their ancient Title, but of this Act of Parliament; which must, as we conceive, in all future Times, whenever the City of *London* may have Occasion to assert or defend

their ancient Title and Franchises, bring them under insuperable Difficulties, and may be followed with dangerous Consequences concerning the very Being and Constitution of the Corporation, many of which it is impossible to foresee or enumerate.

2*dly*, We are of Opinion, that the new Constitution of the Common-Council enacted by this Bill, whereby a Negative is declared and given to the Mayor and Aldermen, not only in the making of By-Laws for the Government of the City, but in other Acts concerning the Issuing and Disposal of the Treasure of the City, and also of the Seal of the City, whereby their Lands and other Estates are subjected to the said Negative, and in all other Acts and Powers at this Time, as we conceive, belonging to the Common Council, excepting only the Appointment of some few Officers mentioned in the Bill, is a dangerous Innovation upon the City, unsupported by any Evidence offered at the Bar, of the ancient Constitution, and though in late Times mentioned to be claimed, yet contrary, as we conceive, to a clear uninterrupted and convincing Proof of the Exercise of the Powers and Authorities of the Common-Council in all Ages, to the 29th of *January* 1723; and we conceive the Alteration made by the Bill in this Respect to be the more unwarrantable, because the written Evidence offered to support the Claim of a Negative by the Mayor and Aldermen was either conceived in general Terms unapplicable to that Claim, and not maintained by subsequent Practice, or was drawn from Proceedings in Times of Trouble and Confusion.

3*dly*, We are of Opinion, that the extraordinary Power, given by this Bill to the Mayor and Aldermen, will vest in them new exorbitant Authorities over all the Citizens, their Rights, Liberties and Franchises of all Kinds, inconsistent with that Ballance of Power in the City, by which the same have

have been preſerved, and in the future Exerciſe thereof muſt, as we conceive, lay the Foundation of conſtant and laſting Diſputes, Diviſions and Diſtractions, in the City of *London*.

4thly, We think this Bill is the more dangerous, becauſe it creates a new Conſtitution in ſeveral Particulars contained in it, not framed upon the antient Rights proved or pretended to, or diſputed on either Side, but is a new Model without due Regard to the antecedent Rights as claimed by either Side, and will deprive a great Number of Citizens of their antient Rights and Franchiſes in Elections and otherwiſe, without leaving them any Opportunity of aſſerting the ſame by due Courſe of Law, and is a Precedent of the moſt dangerous Conſequence to all the Cities and Corporations of this Kingdom.

5thly, We are of Opinion, that the Abolition of the antient Cuſtom of the City touching the perſonal Eſtates of Freemen is a dangerous Innovation tending to let into the Government of the City Perſons unexperienced and unpractiſed in the laudable and beneficial Trade of the City and Kingdom, and unfit for the Magiſtracy of the City, and may thereby introduce improper and pernicious Influences over the Citizens; and we think that the Strength, Riches, Power and Safety of the City of *London* have been hitherto, in a great Meaſure, ſupported by this and other Cuſtoms of the City, as the Walls thereof; and we fear, that the Decay of Trade, and with that, of the Grandeur of the City of *London*, and the Diminution and Loſs of the great Exciſes and Duties ariſing from the Trade of the City, on which the Support of his Majeſty's Government ſo much depends, may be the Conſequence of the Abolition of this ancient Cuſtom and Privilege of the Freemen of the City of *London*.

6thly, Because we are of Opinion, that the Petition of the many Thousand Freemen of the City against this Bill ought to be a far greater Weight against this Bill, than the Petition of Fifteen Aldermen for it; and that the Confusion which may arise from this Bill, if passed into a Law, may tend greatly to the future Disturbance of his Majesty's wise and gentle Government.

Wharton, *Strafford*, *Coventry*,

Die Lunæ 19° *Aprilis*, 1725.

Hodie 3ª *vice lecta est Billa*, entitled, An Act for redeeming the Annuities of Twenty-five thousand Pounds *per Annum* charged on the Civil-List Revenues by an Act of the seventh Year of his Majesty's Reign, and for discharging the Debts and Arrears due from his Majesty to his Servants, Tradesmen, and others.

The Question was put, whether this Bill shall pass?

It was resolved in the Affirmative.

Dissentient'

Because this Bill is to raise a great Sum of Money, which will, as we apprehend, become a Burthen upon the Publick, and increase that immense Load of Debt, which is already above Fifty Millions, and therefore, in our Opinions, require the utmost Application to diminish it, and cannot but give us the most melancholy Prospect, whenever, especially in a Time of Peace and Tranquility, we find any Addition is made to it; and since his Majesty's Revenue, when first settled, was thought sufficient by the Parliament to answer all the necessary Expences of his Civil Government, and is larger, as we conceive, than that of his Predecessors; and since that Revenue has once already, and not long ago, received an Aid of the like Sum, we think we were fully justified in expecting an Account of the

the Reasons of contracting so great a Debt; and because that was refused to be laid before us, we are of Opinion, we cannot discharge our Duty to our Country, if we should thus uninformed, and in the Dark, give our Consent to this Bill, which being the second of this Kind within a short Compass of Time, we apprehend may prove of the more pernicious Example.

Strafford, *Bruce*, *Boyle*.

Die Lunæ 26o *Aprilis*, 1725.

The Commons having brought up a Replication to the Answer of *Thomas* Earl of *Macclesfield* to their Articles of Impeachment against him.

A Question was proposed and stated for appointing his Lordship's Trial on *Thursday* Sevennight at the Bar of the House.

And, the Question being put, whether those Words [at the Bar of the House] shall stand Part of the Question?

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It was resolved in the Affirmative.

Dissentient'

1*st*, Because we are of Opinion, that it highly concerns the Honour and Dignity of this House, in all Cases of Impeachments, that the Trial should be had in the most publick and solemn Manner, that being most suitable to the Laws and Constitutions of this Kingdom in all Cases whatsoever, but is more especially requisite in a Prosecution of the Commons of *Great-Britain* begun and carried on by their Representatives in Parliament: for which Reasons we think, that this Trial ought to be had in *Westminster*-Hall, and not at the Bar of the House, where it is impossible, as we conceive, to provide Room and other Conveniencies for the Attendance of *the House of Commons*, and such others of

of the Subjects of this Kingdom who may be desirous to be present at this Trial.

2*dly*, We are of Opinion, that it is a Justice due to the Earl who is impeached, to give him the Opportunity of vindicating himself, and to assert his Innocence in the most publick Manner imaginable, the Crimes wherewith he is charged by this Impeachment being of that Nature as render it, as we conceive, most desirable, and even necessary, on his Part, to give universal Satisfaction of his Innocence in a Case wherein his Honour, and that of his Posterity, are so highly concerned.

3*dly*, We are of Opinion, that it is of great Moment to the Honour and Dignity of the Crown, the Fountain of Justice, that the Trial of this Impeachment should be had in that Place which may be most satisfactory to the whole Nation, because the Articles, whereby the Earl stands impeached, relate to the Administration of the Publick Justice of the Kingdom, and consists of Facts and Matters charged on him whilst he was Lord High Chancellor, and as such was intrusted by his Majesty with the Execution of the most eminent Office and Station concerning the Administration of Justice.

4*thly*, Because we observe that the Earl impeached has, in his Defence, by his Answer, in some Degree involved the Honour of many great Personages, Peers of this Realm, and others, some living, and others long since deceased, but whose Descendants are now Peers and Members of this House, in the Consideration of the Matters and Crimes charged on himself; which Circumstance of the Defence being, as it seems to us, in the Opinion of the Earl, material to be examined into upon the Trial, we are of Opinion, that in this Respect also, the Place of Trial is become of more Importance and most proper to be in *Westminster*-Hall,

and

and not at the Bar of this House, where the Examinations must unavoidably, as we conceive, be less publick, and in that Respect less satisfactory.

5thly, It appearing to us by several Reports delivered to this House by his Majesty's Direction, which relate to the Administration of the Justice of the High Court of *Chancery*, whilst the said Earl was Lord Chancellor, That there are very great Deficiencies of the Money and Effects belonging to Orphans and Widows, and others the Suitors of the Court; which Money and Effects were brought into the Court, or into the Hands of the Masters in *Chancery*; and which Deficiencies, as they appear to us, amount to a great many Thousand Pounds, as yet wholly unsatisfied and unsecured; for this Reason, we are of Opinion, that it is necessary for the Publick Satisfaction, and particularly of the Suitors concerned, that his Trial should be had, not only in the most solemn Manner, but in the most publick Place also.

6thly, We do not find, that any Impeachment of the Commons has been tried at the Bar of this House, or in any other Place than in *Westminster*-Hall, since the Restoration of King *Charles* the Second, and before that Period, the Impeachment of the Earl of *Strafford* was tried in *Westminster*-Hall; we find also, that, since the Restoration, every Peer which has been tried by this House, either upon an Impeachment or an Indictment, has had his Trial in *Westminster*-Hall, and not at the Bar of this House; and some Time after the late Revolution, private Persons impeached by the Commons, for Frauds and Cheats relating to the *Lutstring* Company, and private Traffick, were appointed by this House to be tried in *Westminster*-Hall; the Impeachment of Dr. *Sacheverell*, for Misdemeanors committed in the Pulpit, was tried there also: for which Reasons we are of Opinion, that this Impeachment

peachment being, as we conceive, of the highest Consequence to the Honour of the Crown and Kingdom, ought to be considered, at least with equal Regard as to the Place of Trial, and in every other Respect with any of those Trials before-mentioned: and the rather, for that the Method of Proceedings on Trials of Impeachments, if had at the Bar of this House, contrary to the general Course since the Restoration, are therefore more unsettled by any late Precedents, and in that Respect may be liable to more Difficulties and Delays than if had in *Westminster*-Hall.

7thly, We think that no Consideration of Delay which may be occasioned for a little Time by the Preparations to be made in *Westminster*-Hall, or any other Account during the Trial, are an equivalent Consideration, or to be balanced with the Publick Satisfaction, which in every Respect is, in our Opinion, due to this Proceeding, and especially with Regard to the Place of Trial.

Wharton,	*Strafford*,	*Lechmere*,
Scarsdale,	*Gower*,	*Coventry*.
Boyle,	*Foley*,	

I dissent for all the aforementioned Reasons, except the Fourth.

Montjoy.

Die Lunæ 30 *Maii*, 1725.

Hodie 3a *vice lecta est Billa*, entitled, An Act for more effectually disarming the *Highlanders*, in that Part of *Great-Britain* called *Scotland*, and for the better securing the Peace and Quiet of that Part of the Kingdom.

The Question was put, whether this Bill, with the Amendments, shall pass?

It was resolved in the Affirmative.

Dissentient'

1st,

1*st*, Because the Bill sets forth, that many Persons in the *Highlands* commit many Robberies and Depredations, and oppose the due Execution of Justice against Robbers, Outlaws, and Persons attainted; which Assertion, we conceive, was meant as an Inducement to pass the Bill, and therefore should have been fully made out by Proof, or have been undeniably clear from its Notoriety; but no Proof was attempted to be made of it; and we have not heard that such Outrages, as are charged upon the *Highlanders*, have been committed by them of late.

2*dly*, We apprehend that this Bill gives to Lords Lieutenants of Counties, Justices of the Peace, and others, such large and discretionary Powers, in some Cases, as are hardly to be trusted in the Hands of any Persons in a free Government, unless apparently necessary to the Preservation of it.

3*dly*, Since the Behaviour of the *Highlanders* has been peaceable and inoffensive for some Years past, and is so at present, as far as appears to us, we cannot but fear this Bill may prove unseasonable, may hazard the Loss of that invaluable Blessing which we now enjoy, a perfect Calm and Tranquility, and raise amongst these People that Spirit of Discontent and Uneasiness which now seems intirely laid; for we apprehend that the Execution of some Authorities in this Bill is more likely to create, than to prevent Disorders; we think it applies severe Remedies where, as far as we can perceive, there is no Disease, and this at a Time when the *Highlanders* not being accused of any Enormities, for which, in our Opinion, the Legislature ought in Justice to punish them, or in Prudence to fear them, we think it would become us, as good Patriots, to endeavour rather to keep them quiet, than to make them so.

Wharton, *Scarsdale*, *Litchfield*.
Gower, *Boyle*,

Die

Die Sabbati 22o Maii, 1725.

Report being made from the Committee of the whole House, on the Bill for enabling *Henry St. John*, late Viscount *Bolingbroke*, and his Heirs Male, notwithstanding his Attainder, to enjoy several Estates, according to such Interests as are limited in a certain Indenture, and other Assurances therein mentioned, and for other Purposes. That the Committee had made some Progress in the Bill.

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The Question was put whether the House shall be put into a Committee again upon the said Bill on *Monday* next at Ten o'Clock in the Forenoon?

It was resolv'd in the Affirmative.

Dissentient.

1*st*, Because we apprehend it to be inconsistent with the Honour and Dignity, which in all Cases should be observed in the Proceedings of this House, to make a Resolution, especially upon Debate, to put the House into a Committee on this Bill, at the same Instant or Moment of Time on which, by an Order of the Twenty-first Instant, it was resolved, that the House would further proceed on the Impeachment of the Earl of *Macclesfield*; and it does not appear to us, that any Precedent is to be found on the Journals of this House, to warrant this Resolution in that Respect.

2*dly*, We conceive, that this Resolution may draw on a Debate or Doubt in the House, touching the Preference to be given by the House to the further Progress on this Bill, or to the further Proceeding on the said Impeachment; which Debate, if any such should happen, we think, may be attended with ill Consequences; the Matter of the said Impeachment so pressing and necessary, in our Opinions, to the publick Justice of the Nation, being

being compared with this Bill, which contains, as we think, extraordinary and undeserved Bounty and Reward to a Person impeached by the Commons, and as yet attainted for Treasons which tended to the Overthrow of the Protestant Succession to the Crown of these Realms, and placing the *Pretender* on the Throne.

Warrington, *Coventry*, *Lechmere*.

Die Lunæ 24° *Maii*, 1725.

Hodie 3ª *vice lecta est Billa*, entitled, An Act for enabling *Henry St. John*, late Viscount *Bolingbroke*, and the Male Heirs of his Body, notwithstanding his Attainder, to take and enjoy several Manors, Lands, and Hereditaments in the Counties of *Wilts*, *Surry*, and *Middlesex*, according to such Estates and Interests as to him or them are limited thereof by the *Quinquepartite Indenture*, and other Assurances therein mentioned, and for limiting the same, in Default of Issue-Male of the Body of the said late Viscount *Bolingbroke*, to the other Sons of *Henry* Viscount *St. John* successively in Tail-Male, and for other Purposes therein expressed.

Contents 75 The Question was put, whether
Not Cont. 25 this Bill shall pass?

It was resolved in the Affirmative.

Dissentient'

1st, Because the Purport and Intention of this Bill is to repeal several Acts of Parliament passed since his Majesty's Accession, whereby all the Estate and Interest of the late Lord *Bolingbroke*, in the Hands mentioned in this Bill, being forfeited to the Crown for High-Treason, were vested in Trustees, and still remain appropriated to the Use and Benefit of the Publick; the Value of which Lands amount, as we believe, to several Thousand Pounds *per Annum*: we therefore think it unjust to all the Subjects of this Kingdom, who have borne many

many heavy Taxes, occasioned, as we believe, in great Measure, by the Treasons committed, and the Rebellion which was encouraged by this Person, to take from the Publick the Benefit of his Forfeiture.

2dly, It appears from the Articles of Impeachment exhibited by the Commons against the late Lord *Bolingbroke*, whereon he now stands attainted by Act of Parliament, that he stood charged with the Commission of several Treasons of the most flagrant and dangerous Nature, committed by him whilst he was *Secretary of State* to her late Majesty Queen *Anne*, for traiterously betraying her most secret Councils to the King of *France*, then at War and in Enmity with her Majesty, and with other Treasons tending to destroy the Ballance of *Europe*, and to raise the then exorbitant Power of the *French* King, who not long before had publickly acknowledged the *Pretender* to be the lawful and rightful King of these Realms.

3dly, The Treasons wherewith he was charged, we conceive, were fully confessed by his Flight from the Justice of Parliament; but his Guilt was afterwards, as we think, indisputably demonstrated by the new Treasons he openly and avowedly committed against his present Majesty; it being notorious, and it having been declared to the House on the Debate of this Bill, that he did, soon after his Flight, enter publickly into the Councils and Services of the *Pretender*, who was then fomenting and carrying on a Rebellion within these Kingdoms for the dethroning his Majesty, into which Rebellion many of his Majesty's Subjects, as well Peers as Commoners, were drawn, as we believe, by the Example or Influence of the late Lord *Bolingbroke*, and for which Reason many Peers and Commoners have since been attainted, and some of them executed, and their Estates, both real and personal, become

become forfeited by their Attainders, and as yet continue under those Forfeitures.

4thly, We have not been informed of any particular publick Services which this Person hath performed to his Majesty, or this Nation, since his Commission of the many high and dangerous Treasons beforementioned, and, in case he has done any, they must be of such a Nature as ought, in our Opinions, to be rewarded in another Manner than is provided by this Bill, and for which, we think, the Crown is otherwise sufficiently enabled, and the Sincerity of his having quitted the Interest of the *Pretender* may, in our Opinions, be justly suspected, he never having, as appears to us, throughout the Progress of this Bill in both Houses, once signified his Sorrow for the Treasons he had committed; and if he had really abandoned that Interest, his private Intelligences or Services, with Regard to the Interest or Councils of the *Pretender*, can't reasonably be supposed, in our Opinions, to be of great Value.

5thly, We think that no Assurances which this Person hath given, nor any Services he can have performed since his Commission of the Treasons aforesaid, or any further Obligations he can enter into, can be a sufficient Security to his Majesty or the Kingdom against his future Insincerity, which may happen, he having already so often violated the most solemn Assurances and Obligations, and, in Defiance of them, having openly attempted the dethroning of his Majesty, and the Destruction of the Liberties of his Country.

6thly, We think the Services he may have performed, if any, ought not to be rewarded either in the Degree or the Manner provided by this Bill, it having been found by Experience, in Cases of like Nature, that the strongest Assurances have afterwards proved deceitful; for which Reason we con-

ceive it to be unwise and dangerous to give such Rewards as can't be recalled, though the Assurances should be broke; and we believe it to be the known Policy and universal Practice of wise Governments to keep the Persons (claiming Merit from such Services as the late Lord *Bolingbroke* can possibly have performed since the Commissions of his Treasons) dependent on the Government for the Continuance of those Rewards.

7thly, The Pardon of the late Lord *Bolingbroke*, under the Great Seal, having been communicated to the House, and under Consideration on the Debate of this Bill, we think that this Bill ought not to pass, because it may hereafter be construed, in some Degree, to confirm or countenance that Pardon: and we are of Opinion, that that Pardon, though it may be legal as to the Treasons committed by him since his Attainder, yet so far as it may be construed (if that should be) to pardon or affect the Act of Attainder of the late Lord *Bolingbroke*, or the Impeachment of the Commons, on which that Act is founded, it is a most dangerous Violation of the ancient Rights and Freedom of the Kingdom, and will defeat the whole Use and Effect of Impeachments by the Commons; which is, as we think, the chief Institution, arising even from the Constitution itself, for the Preservation of the Government, and for the attaining parliamentary Justice; and tends, as we conceive, to render the Rights and Judicature of this House, on Impeachments and Bills of Attainder, vain and useless; all which ancient Rights of both Houses, and of the Subjects of this Nation, were saved to them by the Revolution, and were intended, as we conceive, to have been for ever preserved to them in their full Extent, by the Act passed in the Reign of the late King *William*, of ever glorious Memory, by which the Crown of these Realms is limited

mitted and settled on his present Majesty and his Issue, and in which Act it stands declared, that no Pardon under the Great Seal shall be pleadable to an Impeachment of the Commons.

8*thly*, We are of Opinion, that the Power of dispensing Mercy is an ancient inherent Right of the Crown of these Realms, and the Exercise of it of great Benefit to the People, when 'tis wisely and properly applied; but it being incumbent on us, in the Vote we give for or against passing this Bill, to judge between the late Lord *Bolingbroke*, and to consider the Right and Title he appears to us to have to the Benefits of this Bill, and the Concern which, on the other Side, the Honour, Interest and Safety of the King and his Royal Family, and the whole Kingdom, have, in our Opinion, from the Consequences of it, we think we can't be justified in our own Thoughts, with Regard to the latter, or to our Posterity, if we should consent that this Bill should pass.

Bristol, *Onslow*, *Lechmere*.
Coventry, *Clinton*,

Die Mercurii 26o. *Maii*. 1725.

The Lords having unanimously found the Earl of *Macclesfield* guilty of the High Crimes and Misdemeanors charged on him by the Impeachment of *the House of Commons*, and come to a Resolution that the said Earl should be fined,

The Question was proposed and put, whether the said Earl shall be for ever incapable of any Office, Place or Employment in the State or Commonwealth?

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It was resolved in the Negative.

Dissentient

1*st*, Because it is certain that the Honour and Dignity of the Crown, the Security of our religious

gious and civil Rights, and the Preſervation of our moſt excellent Conſtitution in Church and State, entirely depend upon the Probity, Integrity and Ability of thoſe Perſons whom his Majeſty ſhall call to his Councils, and who ſhall be employed in any Office, Place or Employment in the State or Commonwealth.

2*dly*, Becauſe, we conceive, a Perſon impeached by *the Houſe of Commons* of Corruption of the deepeſt Dye, and who, after a full and legal Trial, was by this Houſe unanimouſly found Guilty of High Crimes and Miſdemeanors, charged on him by *the Houſe of Commons*, which High Crimes and Miſdemeanors were committed by him in the Execution of its high Station as Lord High *Chancellor* of *Great Britain*, ought not to be exempted from this Part of the Sentence, which has always been thought proper to be inflicted by our Anceſtors, both in Regard to the Safety of the Government, and the Juſtice of this Houſe, on Perſons convicted of Crimes of the like Nature; and we do not find one Inſtance on the Journals of Parliament, where this Penalty has been omitted.

3*dly*, We apprehend that his Majeſty having removed the Earl of *Macclesfield* from the Truſt repoſed in him by the Cuſtody of the *Great Seal*, and having earneſtly recommended to the Lords Commiſſioners appointed to ſucceed him, the taking effectual Care that entire Satisfaction be made to the Suitors of the Court, and that ſuch Suitors be not expoſed to any Dangers for the future, and fully expreſſed his gracious Diſpoſition that the ſaid Lords Commiſſioners ſhould look narrowly into the Behaviour of all the Officers under their Juriſdiction, and ſhould ſee that ſuch Officers act with the ſtricteſt Regard to Juſtice, and to the Eaſe of his Subjects (which is a plain Indication of his Majeſty's juſt Reſentment of the Earl's ill Conduct,

during

during his presiding in the Court of *Chancery*) and having, in great Tenderness to the injured Nation, recommended the Protection of the unhappy Sufferers to the Justice of Parliament, we thought it incumbent upon us, on this great Occasion, when the Commons have so clearly made out their Charge against the impeached Earl, not to depart from the Methods of our Ancestors in the framing of our Sentence, with an unusual Tenderness to a Person against whom the whole Nation cries for Justice, but to pursue their glorious Steps upon the like Occasions, and to incapacitate the said Earl from having any Office, Place or Employment in the State or Commonwealth, as the most effectual Means to deter others from being guilty of the like Crimes for the future.

Wharton, *Strafford*, *Denbigh*,
Abingdon, *Pomfret*, *Compton*.
Bruce,

We do dissent to the beforementioned Question for the Reasons following;

1*st*, This House having resolved, that *the House of Commons* have made good their Charge of High Crimes and Misdemeanors against the Earl impeached, and by a subsequent Resolution having unanimously declared him Guilty, we are of Opinion, that it is a necessary Consequence in Law, Justice, Honour and Conscience, that the Disabilities contained in the Question proposed should be a Part of his Punishment, they being such as, we think, the wholsome Laws and Statutes, against which the Earl has offended, do expresly ordain for the Punishment of his Crimes, and such as the Nature, Circumstances and Consequences of his Guilt do, in our Opinions, most justly deserve.

2*dly*, The Articles of *the House of Commons*, whereof the Earl is, in our Opinions, declared

guilty, are an Accusation of him for many repeated Acts of Bribery, Extortion, Perjury, and Oppression, committed by Colour of his Office of Lord High Chancellor, and of many Endeavours to have concealed and suppressed the Discovery of them, even from the Knowledge of his Majesty; those Crimes therefore being by the Laws of this Land, and, as we believe, by the Laws of all civilized Nations in the World, adjudged to be Crimes of an infamous Nature, we think the Incapacity proposed by this Question to be one natural and unavoidable Step to have been made by this House in the Judgment on those Crimes.

3dly, The Earl, in his Answer to the Articles of the Commons, hath asserted, that the Taking the many Sums by him from the Masters in *Chancery* (which Sums he there calls Presents) was never before looked upon to be criminal; and hopes that the giving or receiving such a Present is not criminal in itself, or by the common Law of this Realm, and that there is not any Act of Parliament whatsoever by which the same is made criminal, or subject to any Punishment or Judgment, which can be prayed in this Prosecution: The Earl himself, and his Council on his Behalf, upon his Trial, attempted to justify his Extortions (then called Complements) and endeavoured to maintain, that they are conformable to the Laws of the Land; but we cannot reflect on this Behaviour of the Earl otherwise than as the highest Dishonour thrown by him upon the Laws and Government of this Kingdom, and a most daring and groundless Endeavour to disparage the Common Law of the Land, *Magna Charta* itself, the clear and express Injunctions of many Statutes, particularly those passed in the Reigns of *Richard* II. *Henry* IV. and *Edward* VI. in his Behalf, and of an Act passed this Session of Parliament for the Indemnification of

of the Masters in *Chancery*; against the plain Sense of all which Laws the Earl has, in our Opinions, knowingly and wilfully offended; and as this unparalleled Justification attempted by the Earl will be transmitted to all Posterity, we think it absolutely necessary that the Punishment proposed by this Question should have been inflicted, in Vindication of the Laws and Government itself, against the Aspersion the Earl has thrown upon both, and to prevent any Imputation which may hereafter be cast on the Honour and Justice of this House, as having, on this Occasion, in any Degree seemed to favour or countenance such Defence.

4thly, The Earl has in his Answer asserted some of his Practices to have been long used by his Predecessors, and by others being Chief Justices, Masters of the *Rolls*, and other Judges; and on his *Trial* offered Evidence to prove his Assertion in four Instances only, three of them in the Time of one, and the other in the Time of his immediate Predecessor; but tho' those Instances, as we think, were unattended with the many Aggravations of the Earl's Guilt in those Respects, yet left those Examples, together with that of the Earl, should hereafter be construed a Mitigation of his, or an Encouragement to the like Offence, we think the Punishment now proposed ought to have been inflicted, by which it would become the more exemplary; and the rather, because it appears to us highly probable, that the Imputation as it is thrown by the Earl upon his Predecessors, is unjust; the Memory of many of those wise and excellent Persons never having been, as we believe, stained with an Imputation, till the Earl cast it on them; and some of his Predecessors having, in several Ages, fallen under the severe and strict Inquisition of Parliament for Bribery and Corruption, without any Charge upon them for that criminal Practice.

5thly, We are of Opinion, that this House, now exercising its Judicature as the supreme Court in this Kingdom, upon an Accusation of the Commons for Offences against the known Laws of the Land, has no legal Power or Authority to dispense with or omit those Punishments which are expressly ordained by positive Acts of Parliament; and it appears to us to be indisputable, that the Disabilities proposed by this Question are expressly ordained by the Statute made 11 *Hen.* IV. and in some Degree by the Statute 5 & 6 *Edw.* VI. against buying and selling Offices, for the very same Offences of which this House hath, as we conceive, declared (and of which we are fully satisfied in our Consciences) the Earl is guilty; and the Punishment proposed in this Question hath been inflicted by the House in the Cases of the Lord *Bacon* and Earl of *Middlesex*, for Corruptions, in our Opinions, much less heinous than the Crimes of the Earl impeached; and the Judgments given by this House on those two Persons were founded, as we think, not only upon the Nature of the Crimes, but were directed and prescribed by the Acts of Parliament above-mentioned, and still remain on the Records of this House unimpeached, and their Authority never judicially questioned, to our Knowledge, but are often referred to and approved by the most learned Authors and Judges of the Laws of this Land; we are therefore of Opinion, that it was not only wise, but even that the Law requires, that the Judgment upon the Earl impeached should be consonant in this Respect to the Judgment of this House, in those two Instances; whereby the Law of the Land in this Particular stands declared, as we think, by the Authority of the supreme Judicature of the Kingdom, and which no Power less than the Authority of an Act of Parliament, in our Opinion, can abrogate.

6thly,

6thly, It having appeared, on the Trial of the impeached Lord, that the most dangerous and destructive Corruptions have been committed by him whilst, in the highest Station, in the Administration of publick Justice, to the great Dishonour of the Crown, and the Detriment of great Numbers of the King's Subjects, and in one Instance, whilst he (with others) was in the Exercise of the Regal Authority; we think it of the highest Consequence to the Honour and Support of his Majesty's Government, and the Satisfaction of the whole Kingdom, that the Earl should, by the Judgment of this House, have been incapacitated from ever having the Power or Opportunity of re-acting the like Corruptions, against which, as we conceive, there could be no Security, but by inflicting upon him the Disabilities proposed in this Question.

Scarsdale,	*Ashburnham*,	*Hay*,
Greenwich,	*Wharton*,	*Masham*.
Strafford,	*Carlisle*,	*Northampton*,
Denbigh,	*Litchfield*,	*Abingdon*,
Buchan,	*Gower*,	*Bristol*,
Hallifax,	*Brooke*,	*Bathurst*,
Harborough,	*Bruce*,	*Lechmere*,
Selkirk,	*Manchester*,	*Sussex*.
Orkney,		

Then it being moved to resolve, That the said Earl shall never sit in Parliament, nor come within the Verge of the Court,

After further Debate, the Question was put, that the said Earl shall never sit in Parliament, nor come within the Verge of the Court?

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It was resolved in the Negative.

Dissentient,

1st, We cannot agree to this Resolution for the Reasons given in the last Protest; and further, we conceive, that there was the greater Necessity for the

the Punishment proposed in this, from the Determination of the House on the former Question, from whence (and also from the Question having passed in the Negative) there remains, as we apprehend, no Punishment, but a pecuniary one, to be inflicted on the impeached Earl for his heinous and unexampled Misdemeanors; which Punishment we think (and we fear the whole Nation will judge) to be utterly unadequate to his Transgressions, and not consistent with the Resolutions already passed by this House upon the Earl, whereby he is render'd in Judgment of Law, as we think, an infamous Person, and not capable of bearing Testimony as a Witness, much less to sit in this supreme Court as a Judge, perhaps on Points of the highest Moment to the Kingdom, and over the Lives, Liberties and Properties of the Subjects, many of which he has, in our Opinions, already so notoriously injured.

2*dly*, Because we find, that the Punishment now proposed has been inflicted in the two Instances of Lord *Bacon* and the Earl of *Middlesex*; and the like in earlier Instances, particularly in the Case of *Hubert de Burgo*, created Earl of *Kent*, who was afterwards charged in Parliament for counselling the King to cancel *Magna Charta*, and for other Offences, and was degraded from his Dignity by the Judgment of his Peers: and we conceive, that the Condemnation which this House has already passed on this Earl is founded upon the most aggravated Guilt which has ever appeared in any Criminal, whose Offences were not capital; amongst which his repeated Wholesales (as we conceive them to be) of the Justice of the Court of *Chancery*, in the corrupt Dispositions of the Offices of the Masters, were, as far as in him lay, so many Barters and Sales of *Magna Charta* itself, by which the Sale of Justice is prohibited.

3*dly*,

3dly, We conceive it to be utterly inconsistent with the Honour and Dignity of this House, to let a Lord condemned, as we think, for the most dangerous Corruptions committed by him whilst he was a Judge, to continue afterwards in the Enjoyment of his Seat in this House, under no other Censure than of a Fine, and Imprisonment till that is paid; because, we fear, it may hereafter give too much Encouragement to the worst Corruptions in the greatest Officers of the State, if, from the Example of this Earl, it should be hoped their Crimes may be ransomed by a small Part, perhaps, of their corrupt and extorsive Gains; by which means the greatest Offenders of this Sort may think their Impunity the more secure, by so much the higher that they carry, and the more they succeed in their corrupt Practices: We think also, that the Sum of Thirty thousand Pounds, if that should be the Fine, does very little, if at all, exceed the gross Sum this Earl has received, as we believe, in Bounties from his Majesty, over and above the due Profits of his Offices, and the other great Sums he has extorted and still retains; we are therefore of Opinion, that the Infamy, which, we think, is due to the Crimes of which the Earl is condemned, should have been fixed upon him by the Disability proposed in this Question.

Scarsdale,	*Northampton*,	*Greenwich*,
Wharton,	*Brooke*,	*Ashburnham*,
Strafford,	*Bruce*,	*Abingdon*,
Selkirk,	*Buchan*,	*Carlisle*,
Manchester,	*Denbigh*,	*Bristol*,
Gower,	*Hallifax*,	*Hay*,
Bathurst,	*Lechmere*,	*Litchfield*,
Harborough,	*Masham*,	*Orkney*.

We dissent to the last mentioned Question for the Reasons following:

1st,

1st, For the first Reasons given on the foregoing Question, which, we apprehend, hold the stronger against his being permitted to sit in the highest Court of Judicature, since it may oppose the Judgment of that House to Censure, when a Person guilty of such corrupt Practices shall be one of the Judges.

2dly, We apprehend, that a Person whom his Majesty has, in such a Manner, removed from being a Judge of his Subjects Properties, cannot be thought fit to sit in this House, in such Case as may affect the Lives of every Peer of this House, and the Property of all the Subjects of *Great-Britain*.

Wharton,	*Abingdon*,	*Compton*,
Pomfret,	*Bruce*,	*Strafford*.

Die Jovis 17° *Februarii*, 1725.

Report was made from a Committee of the whole House, to whom it was referred to consider of the Treaty of Peace and Commerce between the Emperor and the King of *Spain*, as also the Treaty of *Hanover*, That the Committee had come to a Resolution for an Address of Thanks to his Majesty, and other Matters.

And it being proposed to add these Words, *viz.* [This House not doubting but your Majesty, in your great Wisdom and Justice to these your Kingdoms, will always preserve to them the full and entire Benefit of the Provision made for further securing our Religion, Laws, and Liberties, by an Act passed in the twelfth and thirteenth Years of the Reign of his late Majesty King *William* III. of glorious Memory; whereby it is enacted, " That " in Case the Crown and Imperial Dignity of this " Realm shall hereafter come to any Person not " being a Native of this Kingdom of *England*, " this Nation be not obliged to engage in any War " for

" for the Defence of any Dominions or Territories
" which do not belong to the Crown of *England*,
" without the Consent of Parliament.]

Which being objected to,

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After Debate, the Question was, whether those Words shall be made Part of the said Resolution?

It was resolved in the Negative.

Dissentient

1st, The Clause of the Act of Parliament referred to in the Words proposed to be added, being passed into a Law upon the solemn Occasion of settling the Crown of these Realms upon his Majesty and his Royal Issue, and the same Provision, and others, in that Act made, having been since re-enacted by Parliament upon another very solemn Occasion, we are of Opinion, that it is hereby become a fundamental and a very sacred Part of the Constitution of the united Kingdom, upon the strict and unviolable Observance of which the future Tranquility of this Nation, and the Properties of the Subjects of *Great-Britain*, may, in our Opinions, greatly depend; and therefore we thought the Words proposed fit to be added to a Resolution of this House, wherein the Defence of his Majesty's Dominions and Territories, not belonging to the Crown of these Realms, is, as we conceive, in some measure engaged for.

2dly, We are of Opinion, that the unfeigned Zeal constantly shewn by this House in Defence of his Majesty's sacred Person, and the Honour and true Interest of his Government, can never fail to exert itself in Vindication of his Majesty's Honour against all Insults and Indignities whatsoever; and tho' we are far from thinking but that a Case may arise, wherein the Consent of this House to engage this Nation in a War in Defence of his Majesty's Dominions in *Germany* may be both just and necessary,

sary, yet it being, in our Judgment, reserved to both Houses of Parliament, by the Laws abovementioned, to deliberate and advise upon all the Circumstances, and thereupon to consent to the Justice of the Cause whereby this Nation shall at any time be engaged in a War upon that Account, we are therefore convinced, that the Words proposed ought to have been added to the Resolution.

3dly, And the rather, because the Words proposed to be added import the most dutiful and entire Confidence in his Majesty's Wisdom and Justice to these Kingdoms in that Respect; and therefore, if they had been added to the Resolution of this House at this critical Juncture, would, as we conceive, have prevented any Jealousies which might happen to arise in the Minds of the Subjects of this Realm, in a Matter which we think to be of such high Importance to them.

Strafford, *Scarsdale*, *Bristol*,
Lechmere, *Litchfield*, *Aberdeen*.
Compton, *Craven*,

Die Mercurii 20° *Aprilis*, 1726.

The Order of the Day being read for taking into Consideration that Part of the printed Votes of *the House of Commons* of the 24th of *March*, 1725, purporting to be a Message to that House from his Majesty, under his Royal Sign-Manual.

And the same being read by the Clerk,

It was proposed to adjourn the further Consideration thereof for a Month.

After Debate, the Question was put, whether the further Consideration of the said Order of the Day shall be adjourned to this Day Month?

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Not Cont. 31

It was resolved in the Affirmative.

Dissentient'

1st,

1st, Because we conceive the Subject-Matter of this Debate to be of so great Consequence to his Majesty's Service, to the Honour of this House, to the Constitution of Parliament, and to the Prosperity of the Kingdom, that it ought not to have been postponed at all, much less for such a Length of Time: It must be for the Service and Support of the Crown to have the Advice of both Houses of Parliament upon all Occasions; and as the Message taken Notice of was only sent to *the House of Commons*, there has hitherto been no Communication with this House thereupon, tho' it contains Matters of the highest Importance; and we conceive, that it tends to undermine the very Foundation of this House, when the Lower House is alone advised with upon any Matter which concerns the Interest of the whole Kingdom.

2dly, As this House has always been esteemed the hereditary and perpetual Guardians of the Liberties and Properties of the People, they ought not to be excluded from giving their Advice in all Matters of publick Concern; and the Rights of the People of *England* are, as we apprehend, invaded, whenever they are deprived of the Assistance of this House of Parliament, without whom no Aids can be given to the Crown, nor no Taxes imposed on the People; therefore, as we conceive, this Message being sent to *the House of Commons*, only tends to subvert those Rights: We think this Debate should not have been adjourned, lest any Inference should be drawn from this dilatory Proceeding, that this House is not as jealous of their Rights and Privileges at this Time, and as much determined to support them, as any of their Ancestors have formerly been.

3dly, Since it cannot be doubted, that it is an inherent and fundamental Right in this House to alter and amend all Money-Bills which come from the

the Commons, we cannot but apprehend also, that Demands of Supply should come from the Throne in the House of Parliament, according to antient Usage; and, we conceive, all other Methods of demanding Supplies are new, and must be dangerous to the Constitution.

4thly, Because there is an Expression in the Message which we apprehend to be entirely unprecedented, and never before used in any Message to *the House of Commons*, the Appellation of Parliament being given to them separately from this House; and therefore, lest any Mistake of this Kind should be attended with such ill Consequences as to encourage evil Ministers hereafter to a total Neglect of this House, we conceive, the proper Notice should have been taken of it immediately, without deferring the further Consideration thereof for a Month.

Scarsdale,	*Boyle*,	*Montjoy*,
Aberdeen,	*Compton*,	*Lechmere*,
Strafford,	*Exeter*,	*Warrington*,
Coventry	*Craven*,	*Bathurst*,
Gower,	*Bruce*,	*Uxbridge*,
Ashburnham,	*Litchfield*,	*Foley*.

Die Martis 24o *Januarii*, 1726.

Report was made from a Committee of the whole House to whom it was referred to consider of his Majesty's Speech at the Beginning of the Session, and some Papers containing Transactions between the Courts of *Great-Britain* and *Spain*, since the appearing of the *British* Fleet on the Coast of *Spain* or the *West-Indies*, together with a copy of the Accession of the States-General to the Treaty of *Hanover*, That they had come to the following Resolution, viz.

That it fully appears to this Committee, upon Consideration of his Majesty's Speech, and the Letters

Letters and Memorials laid before the House by his Majesty's Order, That the Measures his Majesty has thought fit to take were honourable, just, and necessary for preventing the Execution of the dangerous Engagements enter'd into in Favour of the *Pretender*, for preserving the Dominions belonging to the Crown of *Great Britain* by solemn Treaties, and particularly those of *Gibralter* and the Island of *Minorca*, and for maintaining to his People their most valuable Rights and Privileges of Commerce, and the Peace and Tranquility of *Europe*,

Which being read twice by the Clerk,

The Question was put, whether to agree with the Committee in this Resolution?

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Not Cont. 25

It was resolved in the Affirmative.

Dissentient

1st, The Resolution of the Committee being not only a Justification of the Measures therein mention'd, but tending to approve the Counsels which have been given to the Crown relating thereto, we can by no means agree, that it fully appears they were honourable, just and necessary, before they have been maturely and distinctly considered; the only Question as yet debated in the Committee (except the Resolution) being upon an Address of Advice to his Majesty for obtaining a further Security from and Confidence with his Allies, in Case of a Rupture; which Address appeared to us more reasonable and necessary, in the present Conjuncture, than any Vote of Approbation; we therefore cannot concur in approving Measures and Counsels not yet examined into, the further Consideration whereof may be also precluded by this Resolution.

2dly, The Papers hitherto laid before the House, in order to the Consideration of his Majesty's Speech, are such only as concerted the Accession of the States General to the Treaty of *Hanover*, and the Letters

 and

and Memorials since the Arrival of the *British* Fleet on the Coast of *Spain* in *America*; but none of the Negotiations or Measures (which we suppose to have been many) that have been carried on between the Courts of *Britain* and *Vienna*, and the Northern Powers, which his Majesty's Speech and the Resolution also may have relation to, have as yet been communicated to this House: But all those Measures, and many others unknown (as we believe to this House) are in our Opinions, intended to be approved and justified by this Resolution; to which therefore we cannot concur, no more than if it had declared the Measures honourable, just, and necessary, which shall hereafter be taken for the Purposes therein mentioned.

3dly, Altho' we rely in the most dutiful manner, on the Declaration made from the Throne concerning a secret dangerous Engagement for placing the *Pretender* on the Throne of these Kingdoms; yet finding, by the Papers laid before the House, that any such Engagement or Measure, for putting the same in execution, is absolutely denied on the Part of the Crown of *Spain* (one of the supposed Parties to the said Engagement) we cannot agree to the Resolution, because Time may evince, that the Informations his Majesty has received concerning that Engagement were not justly grounded; and the Measures taken to prevent the Executions of them (whatever they were) not having been as yet particularly considered, we cannot declare them honorable, just, and necessary.

4thly, We find it charged in one of the Papers laid before the House, that very considerable Sums of Money have been sent and employed in *France*, *Holland*, *Prussia*, *Sweden*, and other Places, to promote and accomplish the Designs of the *British* Court; which Insinuation, as vile as we think it is, the Committee have not yet taken the same into their Consideration, tho' a thorough Examination into the

the Grounds of that Insinuation is, in our Opinions, absolutely necessary for the Honour of his Maesty's Government, and the Satisfaction of this House; we cannot therefore agree to the Resolution, which, as we conceive, may be construed to stop all future Inquiries into this Matter.

5thly, Whatever Measures may have been taken to preserve *Gibraltar* and the Isle of *Minorca*, yet we cannot agree to declare them honourable, just and necessary, before they have been fully considered in the Committee; and the rather, because we find it asserted, on the Part of *Spain*, in one or more of the Memorials before the House, that a positive Promise has been made, on the Behalf of *Britain*, for the Restitution of *Gibraltar* to *Spain*; on the Performance of which Promise *Spain*, as it appears to us, still insists: We cannot therefore agree to the Resolution, before the Truth and all the Circumstances of that pretended Promise are thoroughly examined into; which Promise, if it should appear to have been made, as is asserted, we are of Opinion, that it was highly criminal in those who advised it.

6thly, The Measures taken for maintaining the *British* Commerce and the Tranquility of *Europe* have not, as we think, been under the distinct Consideration of the Committee, since the Memorials and Letters were laid before the House; and the Opposition made, if any, on behalf of *Britain* at the Court of *Vienna*, to the *Ostend* Company, are unknown to us, as well as the Circumstances relating to the late *Baltick* Expedition; and yet all these Matters were the proper Consideration of the Committee; for which, and the other Reasons abovementioned, we being apprehensive, that the Resolution proposed may not give solid Ground of Satisfaction to the People of *Britain*, or to any foreign Powers in Alliance with us, or conduce to the Ho-

nour of his Majesty's Government, or the Support of the Dignity of his House, can't agree thereto.

Scarsdale,	*Bristol*,	*Coventry*,
Bruce,	*Montjoy*,	*Aberdeen*,
Strafford,	*Lechmere*,	*Boyle*,
St. John de Bletsoe,	*Gower*,	*Bathurst*,
Weston,	*Compton*,	*Foley*,
Oxford and Mortimer.		

Then it was moved to resolve, That an humble Address be presented to his Majesty, representing the deep Concern of this House on the Prospect of the imminent Dangers which threaten these Kingdoms, and all *Europe*, at this Juncture, from the formidable Confederacies which his Majesty assured his Parliament were enter'd into between the Courts *Spain*, *Vienna*, *Russia*, and other Powers, whereby the general Tranquility may soon be broke, and *Europe* engaged in a new War; and it appearing to this House from the Act of Accession of the *States-General*, and the separate Articles thereto belonging, that their Accession is made upon several Conditions and Reserves on their Part, and particularly that in the separate Article concerning the Commerce of the *Austrian* Low Countries to the *Indies*, it is provided, That if on Account of their Use of their Right of Commerce, or in Hatred of that Alliance, any Disturbance should happen, and his Imperial Majesty should suspend or retain the Payment of the Subsidies due to the Public for the Maintenance of their Troops in the Places of the Barrier, or the Payment of the Interest and Principal placed by Mortgage on divers Funds assigned by his Imperial Majesty for the Security of that Payment, or make use of any other kind of Reprisals or Ways of Force, that it is the Intention of the other contracting Powers to protect and maintain the *States-General* in their Right of Com-

merce

merce to the *Indies*, and guaranty them from all the Consequences which might result therefrom, without having Power to proceed by force against the Company of *Ostend*, before the contracting Powers shall have agreed thereon; and by another separate Article it being stipulated and reserved to *the States-General*, that they shall continue to have the same Liberty with respect to every thing that shall be proposed to them by the contracting Powers upon such Points, whose Object shall be the maintaining the Balance of Power in *Europe*, as they had before their Accession, to take part in the Measures which they should not consent to.

And it appearing to this House, that his *Prussian* Majesty did not concur in the said Accession of the *States-General*; in consequence of all which the Strength and Security which the Treaty of *Hanover* might otherwise import in the present unhappy Circumstances is much weakened; and in case of a general Rupture, the Danger, as well as the Burthen of the War, must fall upon *Great-Britain*; and the Preservation of the Ballance of Power in *Europe* depends on the Continuance of the Friendship and Assistance of *France* alone, unless more effectual Measures are taken for that great End.

Therefore that this House, out of Duty to his Sacred Majesty, and from their unfeigned Zeal for the Safety of his Government and the Liberties of *Europe*, doth most earnestly beseech his Majesty to make new and pressing Instances with his *Prussian* Majesty and the *States General* to concur with his Majesty and his other Allies, in such Manner as the present critical and dangerous Juncture requires, and as in the Event of a War, in case a War is unavoidable, his Majesty may, by the Blessing of God, secure a just Ballance of Power in *Europe*, as well as the Religion, Liberties, Properties, and Commerce of his Subjects.

Which being objected to,

The Question was put, whether such an Address shall be made to his Majesty?

It was resolved in the Negative.

Dissentient

The Address proposed representing, as we think, the present State of the late Defensive Alliance made at *Hanover*, which, for aught appears to us, is the main Support on which *Britain* can depend, besides its own Strength, in case of a general Rupture in *Europe*, we thought it highly necessary that it should have passed into a Resolution, whereby his Majesty's Hands might have been strengthen'd in his further Concerts with his Allies, and such further Measures effected as are necessary to preserve his Alliances during the War, against the dangerous Combinations levelled against *Great-Britain*, and by which such a Repartition of Conquests, in case of Success, might be previously settled, as in the Event would prevent the Loss of a just Ballance of Power in *Europe*; and we are the more convinced of the Necessity of the Advice proposed in the Address, because we find, in one of the Lettres laid before the House, that a Proposition has been made by the Court of *Spain* to the King of *France*, though not agreed to, to declare himself against *Great-Britain*, on a Pretence (which we hope is groundless) that the Defensive Alliance between *Great-Britain* and *France* doth no longer subsist.

Scarsdale, *Coventry*, *Boyle*,
St. John de Bletsoe, *Strafford*, *Compton*,
Gower, *Bathurst*, *Bruce*,
Bristol, *Montjoy*, *Aberdeen*,
Weston, *Lechmere*, *Foley*,
Oxford and Mortimer, *Masham*,

After which, it was moved to Order, that this House will on this Day Seven-night take into further

ther Consideration his Majesty's most Gracious Speech.

The same being objected to, and Debate had thereon,

The Question was put upon the said Motion?

It was resolved in the Negative.

Dissentient'.

1*st*, Because the Committee having sat one Day only on the Consideration of his Majesty's Speech, could possibly deliberate but upon few of the many weighty Points which arise thereon; on all which the Advice and Support of this House, in our Opinions, is absolutely necessary; and since even the Facts relating to many of these weighty Matters have not, as we conceive, been yet laid before the House; we think, the further Consideration of the Speech should not have been refused, there not being, as we believe, any Precedent for such a Refusal, under the like Circumstances, on the Journals of this House.

2*dly*, His Majesty's Speech containing the Causes of Calling his Parliament, and the Advice of the House to the Crown being required thereon, the Refusal of the Day proposed seems to us, tending to disable this House from discharging their Duty to the Crown, as well as to the Kingdom, in this critical and dangerous Juncture; and as the further Consideration proposed is thereby at present refused, the Precedent (as we fear) lays a Foundation for depriving this House in future Times of any Opportunity at all for such Considerations, by which Means this House must (in our Opinions) be render'd useless in those great Affairs, whereon the Safety and Support of the Liberties of the Kingdom may depend.

Bruce, *Bristol*, *Lechmere*,
Aberdeen, *Scarsdale*, *Weston*,
Strafford, *Oxford and Mortimer*, *Masham*,

Coventry,	*Montjoy*,	*St. John de Bletsoe*,
Bathurst,	*Boyle*,	*Compton*.
Gower,	*Foley*,	

Die Mercurii 19° *Aprilis*, 1727.

Hodie 3ª *vice lecta est Billa*, entitled, An Act for continuing the Duties upon Malt, Mum, Cyder and Perry, in that Part of *Great Britain* called *England*; and for granting to his Majesty certain Duties upon Malt, Mum, Cyder and Perry, in that Part of *Great-Britain* called *Scotland*, for the Service of the Year 1727; and for appropriating the Supplies granted Duplicates of *Exchequer* Bills, Lottery Tickets and Orders lost, burnt or otherwise destroyed; and for giving further Time to Clerks and Apprentices to pay Duties omitted to be paid for their Indentures and Contracts.

Contents 73. Not cont. 17. After Debate, the Question was put, whether this Bill shall pass?

It was resolved in the Affirmative.

Dissentient.

1*st*, Because in this Bill it is enacted, that out of the Aids or Supplies granted this Session of Parliament, there shall and may be from Time to Time issued and applied such Sum or Sums of Money as shall be necessary for and towards answering and defraying such Expences and Engagements as have at any Time been, or shall before or until the 25th Day of *December*, 1727, be made by his Majesty, in concerting such Measures, as he in his great Wisdom thinks will best conduce to the Security of the Trade and Navigation of this Kingdom, and to the preserving and restoring the Peace of *Europe*; which Clause, we think, is inconsistent with that Part of the Bill, which forbids the supplies to be issued to any other Purpose than those specified, and renders ineffectual that Appropriation of the Publick-Money, which the Wisdom of

many

many Parliaments has thought, and, we are convinced, ought to be thought a necessary Security against the Misapplication of it.

2dly, Because there is no Provision in the Bill to oblige any Person to give an Account of any Money that shall be disposed of by Virtue of the Power in this Clause.

3dly, Because there are sufficient Sums granted to answer every particular Purpose that Money can be wanted for, as far as our present Views can reach; and if any unforeseen Emergency should demand a further Supply, we should think that might be provided for, as has been formerly practised, when Necessity required; and we are persuaded this might be done with less Inconvenience, than by this Delegation of almost a dictatorial Authority, at least, till the Parliament could be called together, who have given so many Instances of their Zeal for his Majesty, that he could have no Room to doubt of their Readiness to make good whatever he should have expended for the Advantage of his People.

4thly, Because we think, that absolute Powers ought to be given in a free Government only upon Occasions of evident Necessity, and when the very Being of the Government is in Danger; and though we allow our present Circumstances to be as melancholy as they have almost at any Time been, yet we think it a very improper Remedy for our present State to depart from the approved, and in our Judgment, essential Forms of giving the Publick Money; nor can we be persuaded, that it is the only, or even the best Expedient that can be found to extricate us out of our unhappy Situation, to repose such a Confidence in the Crown, in the Disposition of immense Sums of Money, as may by the Advice of wicked and incapable Ministers (if it should be our Misfortune ever to have such) be attended with great Prejudice to our Properties,

and

and great Danger to our Liberties, with the Hopes of the Preservation of which we cannot flatter ourselves, but by a strict Adherence to those excellent parliamentary Methods, of granting all Sums of Money only upon Estimates, and for Services publickly avowed.

5thly, Because the Precedents that were offered to justify this Cause were far from giving us any Satisfaction; for if they had been plain and full to the Point (which we think they were not), yet, in our Opinions, ought not to be followed, lest Clauses of the same Nature might become too frequent, and lest an unlimited Power in the Crown to raise Millions on our Fellow-Subjects might be looked upon by Degrees as a Thing of Course, and so at last the total Power to levy and dispose of the Peoples Money be given to one Part of the Legislature, which by our wise Constitution is, and with Safety can only be lodged in the Whole.

Strafford,	*Bingley*,	*Oxford and Mortimer*,
Warrington,	*Lechmere*,	*Gower*,
Scarsdale,	*Maynard*,	*Aylesford*;
Coventry,	*Bathurst*,	*Foley*,
Litchfield,	*Aberdeen*,	*Brooke*.
Boyle,	*Craven*;	

Die Martis 18o *Martii*, 1728.

The Order of the Day being read for taking into further Consideration the State of the Nation,

It was moved to resolve, That it is the Opinion of this House, that for the Honour of his Majesty, and the Preservation and Security of the Trade and Commerce of this Kingdom, effectual Care should be taken in the present Treaty, that the King of *Spain* do renounce all Claim and Pretension to *Gibraltar* and the Island of *Minorca*, in plain and strong Terms.

Con-

Contents 31 After Debate, the Question was
Not Cont. 84 put thereupon? And,

It was resolved in the Negative.

Dissentient

1*st*, Because, we think our Right to a Place of such Importance to our Commerce should be secured by more than general Stipulations, which may be liable to different Constructions, and will probably be interpreted by the *Spaniards* in their own Favour, however we may interpret them in ours.

2*dly*, Because the King of *Spain*, having claimed by his Ministers several Times, not only from the late King's positive Promise, as he asserts it to be, but from our Forfeiture of it too, by our Infractions of those Conditions on which he gave it up to us; and having actually besieged it since he yielded it to us by Treaty, it seems reasonable to us, that we should insist upon his making his Renunciation of it in Words as plain and strong as he has made his Claim to it, especially since, as far as we have heard, our Plenipotentiaries have not been able to prevail upon him to shew any Inclination to relinquish his Pretensions to it during the long Course of these perplexed Negotiations, in which we have been unskilfully, as we fear, and we are sure we have been unfortunately involved.

3*dly*, We think it is incumbent upon us to take particular Care, that our Right to it should not in the least be precarious, because, we apprehend, we have great Reason to fear that the King of *Spain*'s Allies are very desirous to have it again in his Hands, and no Reason at all to believe that our own Allies are sollicitous to have it continue in ours: If there should be the least Room, upon a Peace, for the King of *Spain*'s Pretensions to it, from any loose or doubtful Expressions, we are apprehensive, it may lay a Foundation for Uneasiness

and

and Animosity, and might interrupt a perfect Harmony between us and a Nation whose Friendship must always be of the greatest Advantage to us; we think our Zeal to preserve our Title to it, in that most effectual Manner we proposed, would have terrified any wicked Ministers even from the Thoughts of giving it up, if ever we should be in such wretched Circumstances as to have any who might think a War more dangerous to themselves than the Nation, and who might for that Reason be tempted to purchase an inglorious Peace at the high Price of so valuable a Part of the *British* Dominions.

Beaufort,	*Berkshire*,	*Coventry*,
Strafford.	*Scarsdale*,	*Litchfield*,
Gower,	*Boyle*,	*Craven*,
Bathurst,	*Montjoy*,	*Abingdon*,
Plimouth,	*Weston*,	*Foley*.
Oxford and Mortimer,	*Willoughby de Broke*,	

Die Veneris 18o *Aprilis*, 1729.

The House (according to Order) proceeded to take into further Consideration the State of the Nation.

And the Residue of the Papers (read in Part Yesterday) which were laid before this House, as well in Relation to the Squadron of Ships sent to the *East-Indies*, as to the Depredations made by the *Spaniards* on his Majesty's Subjects in *America*, being read,

It was proposed to resolve, That it appears to this House, that the Expence of the Squadron sent to the *West Indies*, under the Command of Vice-Admiral *Hosier*, having been borne by this Nation alone, though designed to prevent the *Spaniards* from seizing the Effects belonging to his Majesty's Allies, as well as his Subjects, which were on Board the *Flota* or *Galleons*, and from applying the Trea-

sure

sure to disturb the Peace, and invade the Liberties of *Europe*, has been an unreasonable Burthen upon this Kingdom.

Contents 27 Not Cont. 87 After Debate, the Question was put thereupon? And,

It was resolved in the Negative.

Dissentient.

1st, Because, we conceive, that our Allies were, at least, as much concerned as ourselves, to prevent the *Spaniards* from disturbing the Peace and invading the Liberties of *Europe*, if there was at that Time sufficient Foundation to apprehend such Attempts on the Part of *Spain*, and because our Allies, the *French* in particular, had a much greater Share in the Effects of the *Galleons* than the Subjects of this Nation, and by Consequence were much more concerned in Interest to prevent the King of *Spain* from seizing those Effects.

2dly, Because we not only took the whole Charge of this Expedition upon ourselves, but have increased our national Forces, taken great Numbers of Foreign Troops into our Pay, and contracted to pay divers Subsidies to Foreign Princes, when it has not appeared to us in any authentick Manner, as we apprehend, that our Allies have taken upon themselves any Expence proportionable to this, in Consequence of the *Hanover* Treaty.

3dly, Because we are convinced, that the national Expence and Losses occasioned by this Expedition do not only very far exceed any Interest which the Subjects of this Nation can be supposed to have in the *Galleons*, but have likewise been much more considerable than any Detriment which has accrued to *Spain* by delaying the Return of the *Galleons*:

4thly, That by taking this Expedition solely upon ourselves, we drew the whole Resentment of the Court of *Spain* upon this Nation, and gave the

French

French an Opportunity of healing the Breaches which had been made between those two Courts, of acquiring a greater Share than ever they had in a most beneficial Branch of Trade, and of acting rather the Part of Mediators than that of Parties in the Dispute.

5thly, We cannot help being of Opinion, that this Burthen was the more unreasonable, since it does not appear that this Expedition has had the Effect of obliging the *Spaniards* clearly to adjust the Points in Dispute between us, or effectually to secure to our Merchants a just Satisfaction for the great Losses which they have sustained by the Seizures and Captures made by the *Spaniards*.

Beaufort,	*Oxford and Mortimer*,	*Litchfield*,
Strafford,	*Plimouth*,	*Bathurst*,
Gower,	*Foley*,	*Scarsdale*,
Montjoy,	*Craven*,	*Northampton*,
Coventry,	*Willoughby de Broke*,	

Die Lunæ 5° Maii, 1729.

The Judges, according to Order, delivered a Bill prepared by them, upon the Debate of the House, entitled, *An Act to disable* Thomas Bambridge, *Esq; to hold or execute the Office of Warden of the Prison of the* Fleet, *and to impower his Majesty, his Heirs and Successors, during the Life of the said* Thomas Bambridge, *to grant the said Office to such Person or Persons as he shall think fit.*

And the same was read the first Time.

Then it being moved, that the Bill be now read a second Time,

The same was objected to.

After Debate, the Question was put, whether this Bill shall be now read a second Time?

And it was resolved in the Affirmative.

Dissentient

1st, Be-

1st, Because the reading any Bill twice the same Day is against the standing Orders of this House, which ought not to be broke but in Cases of the utmost Necessity, and even in those Cases ought first to be considered in a full House: or else absent Lords, as well as the Parties concerned in Bills, may be surprised.

2dly, Because we do not conceive that there was the least Necessity or Occasion for reading this Bill twice in one Day.

3dly, Because we are apprehensive, this may be brought as a Precedent hereafter to proceed in too hasty a Way to pass Bills which divest Men of their Properties, and lay Incapacities upon them during Life.

Warrington, *Haversham*, *Coventry*.
Strafford,

Die Sabbati 10° *Maii*, 1729.

Upon Report from the Committee of the whole House, upon the Bill relating to the Custom on Corn imported, and for appropriating the Supplies granted in this Session of Parliament, and other Purposes, That they had gone through the Bill without any Amendment.

It was proposed to leave out that Part of the Clause of Appropriation which impowers the issuing and applying, on Account of the Arrears of the Revenue granted to his Majesty for Support of his House-hold, any Sum not exceeding the Sum of 115,000*l.* in such Manner, and for such Purposes as his Majesty should appoint, as also the Proviso in Relation to the replacing that Money after his Majesty's Demise.

Which being objected to,

The Question was put, whether that Part of the said Clause of Appropriation shall stand Part of the Bill?

Contents 69
Not Cont. 19

It

It was resolved in the Affirmative.

Dissentient

1*st*, Because we apprehend, that this Part of the Clause is neither founded on the Words of the Act to which it refers, nor warranted by any Construction thereof; for the Provision made in that Act is, That whenever the Produce of the several Duties and Revenues thereby granted appears to be so deficient, that within any one Year it should not be sufficient to answer and satisfy the Sum of Eight Hundred Thousand Pounds, then, and not in any other Case, such Deficiency is to be made good out of the next Aids in Parliament. As this Act therefore provides only for a real Deficiency of the Produce, and not for any Arrear in the Receipt within the Year, as it has appeared by the Accounts laid before this House, that the real Produce was considerably more than sufficient to answer the Sum of Eight Hundred Thousand Pounds, we think, there can be no Colour to affirm that there has been any such Deficiency as the Act can be supposed to provide for: This appears from the Words of the Clause, which directs the Application of the Sum of One Hundred and Fifteen Thousand Pounds for and upon Account of Arrears; and we cannot conceive the Arrears provided for by this Clause, and the Deficiency described in the Act, to be one and the same Thing, since if they could be so understood, the Provision in the Clause would have been made agreeable to the Words of the Act, which relate to a Deficiency only; and it would be highly unjust to his Majesty to direct the Sum of One Hundred and Fifteen Thousand Pounds to be refunded to the Publick at any Time or under any Conditions; for if there had been a real Deficiency, the Grant to his Majesty should be absolute, and the Sum of One Hundred and Fifteen Thousand Pounds would legally belong

belong to him; so that this Clause either takes from his Majesty what we have no Right to take, or gives him what, as we conceive, he has no Right to claim; as we cannot then consider this Sum to be given either for a real Deficiency, founded on the Civil-List Act, or that it can be warranted by the said Act, as a supposed Arrear, we conceive it to be a new Grant to his Majesty, and a new Burthen on the People, which does not appear to us to have been demanded by the Crown, and consequently not to have passed according to the Forms hitherto practised and requisite in all such Cases.

2*dly*, This Clause appears to us unreasonable on many Accounts; as there was no real Deficiency at *Midsummer* 1728, to which Time the Account is stated, so neither is there any Arrear at the Time when this new Supply is granted, but the whole Sum of Eight Hundred Thousand Pounds, and considerably more, was come into his Majesty's Coffers, and he was, consequently, in Possession of the very Money, the supposed Arrear of which is made good to him by this Clause: Thus it seems to us, that the Nation is loaded not to complete, but to augment the Sum designed for his Majesty's Civil-List, and this at a Time when the publick Debts are increased, when the Taxes are heavily felt in all Parts of the Country, when our Foreign Trade is incumber'd and diminished, when our Manufactures decay, when our Poor daily multiply, and when many other national Calamities surround us: These Considerations are in themselves very moving, and we apprehend that they must appear stronger, when it shall be further considered, that his Majesty would be so far from wanting any of these extraordinary Supplies, that even without the Provision in the Civil-List Act, for making good Deficiencies, he would be pos-

sessed of a far greater Revenue than King *William*, Queen *Anne*, or even his late Majesty enjoyed; and yet his present Majesty, then Prince of *Wales*, received out of the Civil-List Revenues, during the Reign of the late King, One Hundred Thousand Pounds *per Annum*, besides the entire Revenues of the Principality of *Wales* and Duchy of *Cornwal*; whereas it does not appear to us, that a like Sum of One Hundred Thousand Pounds *per Annum*, or even the Revenues of the Principality of *Wales*, have been yet settled on his present Royal Highness.

3dly, We cannot but be extremely apprehensive of the many ill Consequences which may follow from a Grant of Money to the Crown, so ill grounded and so unreasonable as we conceive this to be: The Advantage in Favour of his Majesty, established by the Civil-List Act, is very great, since, if the Produce of the Revenues granted and appropriated to the Use of the Civil-List does not answer the yearly Sum of Eight Hundred Thousand Pounds, the Deficiency is to be made good to his Majesty by the Publick; whereas no Provision is made by which, if the Produce of those Revenues exceeds the Sum of Eight Hundred Thousand Pounds, the Surplus shall accrue to the Benefit of the Publick; by this Precedent, not only real Deficiencies are to be made good, but Supplies are to be given for Arrears standing out at the End of every Year which shall come in before Supplies can be granted, though the Supply given to make good Arrears in one Year will certainly increase the Surplussages in another: When we consider the Method which has obtained of anticipating the Revenues, before they come to the *Exchequer*, contrary to the ancient and legal Practice, when we reflect in what Manner these Accounts have been made up, and in what Manner

they

they have been brought in, we cannot but apprehend that the Door is opened by this Precedent for laying new and excessive Charges on the Nation: The Revenues appropriated to the Uses of his Majesty's Civil-List are subject in their own Nature to vary, and even when there is no Deficiency in the Produce, there may be Arrears in the Receipt; these Arrears may easily be increased by the Management of designing Ministers, by private Directions to Receivers, and by artful Methods of stating Accounts; from all which we cannot but apprehend, that now this Precedent is made, we may have frequent Accounts of Arrears, and a grievous and even intolerable Load may be brought on the Nation in a short Time; and we are persuaded that his Majesty can have no Satisfaction in finding his Court abound in Wealth, whilst he may undergo the Mortification of seeing his People reduced to Poverty; neither can we conceive that the latter Part of the Clause is in any Degree an adequate Provision against the Evil we complain of, or the Apprehensions we entertain; for an Account to be made up at his Majesty's Demise will not prevent the Consequences of this Precedent during his Life; and as we hope that his Reign will be long, so we may be allowed to fear that even during the Continuance of it, this extraordinary Method of increasing his Majesty's private Revenue (already very ample) may prove a Source of general Discontent, which is but too apt to produce general Disaffection.

Plimouth,	*Northampton,*	*Litchfield,*
Willoughby de Broke,	*Strafford,*	*Beaufort,*
Gower,	*Warrington,*	*Scarsdale,*
Boyle,	*Coventry,*	*Montjoy.*
Oxford and Mortimer,	*Bathurst,*	

Die Lunæ 12° Maii, 1729.

Hodie 3ª vice lecta est Billa, entitled, An Act to ascertain the Custom payable for Corn and Grain imported; for better ascertaining the Price and Quantity of Corn and Grain, for which a Bounty is payable upon Exportation; for appropriating the Supplies granted in this Session of Parliament; and for giving further Time to Clerks and Apprentices to pay Duties omitted to be paid for their Indentures and Contracts.

The Question was put, whether this Bill shall pass?

It was resolved in the Affirmative.

Dissentient

1st, Because, we conceive, there will accrue less Detriment to the Publick, by rejecting this Bill, than agreeing to it with that Part of the Appropriation Clause, which enacts the Sum of One Hundred and Fifteen Thousand Pounds to be given to his Majesty for and upon Account of Arrears in his Civil-List; since it would have been easy, had this Bill been rejected, to have provided for the general Appropriation of the several Aids granted in this Session of Parliament in some other Manner.

2dly, Because the Revenue for defraying the Expences of his Majesty's Civil Government being considerably more ample than that of any of his Predecessors, we flattered ourselves that the Publick would not have been called upon again in so short a Time to make an Addition to that liberal Provision for the Crown, though there had been some small Deficiency in some of the Duties appropriated to the Service of it; but this, in our Opinion, is so far from being the Case, that we are firmly persuaded, if we had agreed to this Bill, with that Part of the Clause, we should have consented to a Grant of a new Aid, and not to make good

good the Deficiency of an old one, since it seems evident to us, that the Produce of the Civil-List Funds, in the first Year of his Majesty's Reign, rather exceeded than fell short of Eight Hundred Thousand Pounds, even from those Accounts delivered into the House, which, we believe, will be universally allowed to be free from any Suspicion in Favour of the People.

3dly, Because we look upon this to be not only a Grant of a new Aid, but a Grant made in such an irregular Manner, without being demanded by the Crown, that it cannot but give us some Reason to think, that however it may be wanted by the Ministers, it may possibly not be desired by his Majesty.

4thly, Because the literal Interpretation of Part of the Act for settling the Civil-List Revenues on his Majesty, which was contended for, in order to justify that Part of this Clause to which we object, seems to us liable to Consequences very dangerous to the Properties of all the Subjects, by putting it into the Power of those who have the Management of the Publick Money, to give the Crown a Title to the Arrears of the Civil-List Funds (though perhaps left on purpose in the Hands of the Receivers) and to a parliamentary Supply for those very Arrears too.

5thly, Because the Argument which was used, for passing the Clause, from the Smallness of the Sum, seems to us a much stronger Reason why it should not be asked, than why it should be granted.

6thly, Because, we observe, that whenever a Supply for the Civil-List has been asked in Parliament, it has caused great Uneasiness in the Nation, though demanded from the Crown itself, and upon Pretences, in our Opinion, more justifiable, and at Times less unseasonable than this, when, notwithstanding our most prevailing Methods of

Negotiation, the Fate of *Europe*, as far as we are enabled to judge, is ſtill in Suſpence, and we labour under Difficulties that unavoidably attend ſuch a doubtful and undetermined Situation of our Affairs Abroad; when the Complaints of the People at Home are general and loud, and, as we fear, too well founded on Account of their Poverty, and other Calamities with which they have been long afflicted; and when, for that Reaſon, it appears to us to be not only a proper Clemency, but true Policy too, to avoid giving them the leaſt Ground to apprehend that the Parliament, by laying unneceſſary Burthens upon them, may itſelf become one of their Grievances.

7thly, Becauſe this Attempt, when we conſider it in all its Circumſtances, as far as appears to us, is without Example, and we dread leſt it ſhould be made one, and laid hold of as a Precedent hereafter, if ever the Nation ſhould have the Miſfortune to ſee a laviſh, weak and rapacious Miniſtry, armed with great Power, deſirous to raiſe ſuch extraordinary Supplies, more in Reality to ſupport their own inconſiderate and pernicious Schemes, than the Honour and Dignity of the Crown,

Scarſdale, *Strafford*, *Warrington*,
Plimouth, *Montjoy*, *Litchfield*,
Beauford, *Boyle*, *Gower*,
Coventry, *Northampton*, *Bathurſt*,
Oxford and Mortimer, *Willoughby de Broke*.

Die Martis 17° *Januarii*, 1729.

The Houſe (according to Order) proceeded to take into Conſideration the Treaty of Peace, Friendſhip and mutual Defence, between his Majeſty and the Moſt *Chriſtian* King, and the King of *Spain*, concluded at *Seville* the Ninth of *November*, N. S.

N. S. 1729, with the separate Articles thereunto belonging.

And the same being read by the Clerk, it was moved to resolve, That the said Treaty does contain all necessary Stipulations for maintaining and securing the Honour, Dignity, Rights and Possessions of this Crown, and that all due Care is taken therein for the Support of the Trade of this Kingdom, and for repairing the Losses suffered by the Merchants.

Contents 72 After Debate, the Question was
Not Cont. 30 put thereupon? And,

It was resolved in the Affirmative.

Dissentient

Because, we think, this Question from the Debate, as well as from the Import of the Question itself, was designed as a Justification of the whole Treaty, which appears to us neither to be solid, honourable, nor advantageous, for the following Reasons:

1*st*, Because we know not, whether all the Treaties and Conventions concluded between *England* and *Spain* may be in every Article of them so beneficial to us, as to be fit to be again confirmed and renewed.

2*dly*, Because as we think it extremely difficult to examine with requisite Nicety, how advantageous every Treaty and Convention between *Great-Britain* and *Spain* may be to us, so we think it absurd to pretend to judge of any future Agreement; and therefore we think it very extraordinary, and apprehend it may be of very ill Consequence to be bound, as we are by this Treaty, to ratify and guaranty whatever Agreement shall be made between the King of *Spain* and the Dukes of *Tuscany* and *Parma*, concerning the Garrisons once established in their Countries.

3dly, Because the Obligation on our Merchants to make Proof of the Justice of their Demands, for their Losses, at the Court of *Spain*, is, in our Opinion, an Hardship upon them, and not honourable for the Nation; and we are persuaded those unfortunate Gentlemen will undertake so troublesome and expensive a Journey with the less Chearfulness, because they may fear their Claims are likely to be counterballanced by others from the *Spaniards*; and after all they have only the slender Comfort of hoping, if they think there is even any Room for 'em to hope, to get that Redress by Commissaries which they have not hitherto been able to obtain by Plenipotentiaries.

4thly, Because we are obliged to assist in effectuating the Introduction of Six Thousand *Spanish* Troops into the Towns of *Tuscany* and *Parma*, without specifying the Methods we are to take, or Charge we are to be at in giving that Assistance; so that, for aught we know, we may be liable to an endless Trouble and unlimited Expence to compass what, if effected, cannot, in our Opinion, be of any Advantage to us, but, as we fear, may prove most prejudicial and destructive.

5thly, Because we oblige ourselves to guaranty for ever, not only to Don *Carlos*, but even to all his Successors, the Right to, and Possession of the Estates of *Tuscany* and *Parma*; which we think is a Stipulation of so extensive a Nature, that we can hardly see we are ever like to be exempted from the Disputes and Quarrels it may too probably draw upon us.

6thly, Because this Treaty differs from the *Quadruple Alliance*, upon which 'tis pretended to be chiefly founded, in some Points that seemed to be thought essential by ourselves, as well as by the Kings of *France* and *Spain*, as far as we can judge by the Stipulations of former Alliances, particularly in

in that of introducing *Spanish* Troops instead of Neutral into *Tuscany* and *Parma*, and by stipulating that those Troops shall remain there till Don *Carlos* and his Successors are secure and exempt from all Events; which, from the Nature and Extent of human Foresight, we think, the warmest Advocates for the Treaty must allow is in Effect to say, they are to remain there for ever.

7thly, Because the Alterations in this Treaty, from that of the *Quadruple Alliance*, are made not only without the Consent of the Emperor, but we fear he will interpret it, since he has not the Compliment paid him of being invited into it, almost in Defiance of him? And if this Treatment of him should unhappily alienate his Friendship from us, we think we should, as good *Englishmen*, have great Reason to lament the Loss of such an ancient, powerful and faithful Ally.

8thly, Because we apprehend there is an artful Omission throughout the whole Treaty of any plain and express Stipulation to secure to us our Right to *Gibraltar* and *Minorca*; which, however willing we are to attribute it rather to the superior Skill of the *Spanish* Managers, than to any Want of Zeal for their Country in our own, is an Error that we fear will leave our Possession of those important Places too liable to future Cavils; and we think the *Spaniards* could not, with the least plausible Pretence of Reason, have refused to ascertain our indubitable Right to them, in as strong and explicit Terms as we have declared ourselves Guarantees of the Right, Possession, Tranquillity and Quiet of the *Italian* Dominions allotted to Don *Carlos* and his Successors, since we have had the Complaisance to admit the *Spaniards* to discuss their Pretensions for the Restitution of the Ships taken in the Year 1718, though their Right to that Compensation was as effectually secured to them, as it can be pretended

tended ours is to *Gibraltar* and *Minorca*, by those general Words that renew and confirm all former Treaties.

9thly, Because his Majesty himself, by his Speech from the Throne, seems not entirely free from Apprehensions of new Troubles being still likely to arise in *Europe*, even in Resentment of the present Engagement; and if he thought this Peace had settled the publick Tranquillity upon a lasting Foundation, we are confident his paternal Goodness would have inclined him, by a further Reduction of Troops, to have given more Ease to his People, who had long groaned under the heavy Burthen of Taxes, almost insupportable, and a large standing Army, and have had all their Grievances increased by a pernicious Interruption of late of that flourishing Commerce, without which they can neither be happy at Home, nor respected Abroad.

10thly, Because it appears to us, after the most mature Consideration of all Particulars, that we are much farther obliged than we were before, and than we think we ever ought to be, or meddle in Disputes about Territories at a great Distance from us, and in which our National Interest seems no way concerned; and since one of the principal contracting Parties in that Alliance upon which this is built is not only left out of it, but, as we think, there is Reason to believe extremely disobliged by it; and since it seems impossible to make the Introduction of *Spanish* Troops into *Tuscany* and *Parma*, even by the most prevailing Application we can use, consistent with the Dignity and Quiet of those Princes whose Towns they are to garrison; we own ourselves, upon the whole, incapable of discerning either the Equity or Policy of this Treaty, which we fear will not enable us either to recover what we have lost, or long to preserve

quietly

quietly and undisturbed what we yet possess; and which, we fear, instead of extricating us out of those Difficulties that we have of late been involved in, and which have been owing in a great measure, in our Judgment, to the Incapacity of those Ministers, by whose Counsels we have been entangled in a Labyrinth of unnecessary, if not prejudicial Treaties and Engagements, will probably be the melancholy Occasion of fresh Disturbances, and bring upon us, already too much impoverished, the Misery and Confusion of a War, which if once kindled, we are convinced, it will be as difficult to know the End, as to determine the Success of such a fatal Event.

Scarsdale,	*Bruce,*	*Abingdon,*
Beaufort,	*Boyle,*	*Warrington,*
Gower,	*Bathurst,*	*Montjoy,*
Bedford,	*Foley,*	*Aylesford,*
Thanet,	*Bridgewater,*	*Middleton,*
Anglesey,	*Strafford,*	*Bristol,*
Coventry.	*Plimouth,*	*Willoughby de Broke,*
Huntingdon,	*Northampton,*	*Oxford and Mortimer.*

Die Lunæ 16o *Martii*, 1729.

The House being moved, That the Bill entitled, *An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters*, be read a second Time on *Friday* next,

The same was objected to, and a nearer Day being proposed,

After the Debate, the Question was put, whether the said Bill shall be read a second Time on *Friday* next?

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It was resolved in the Negative.

Dissentient.

Because we conceive, that the Consideration of the State of the Nation, which is appointed for next

next *Thursday*, ought rather to precede than follow that Deliberation, which will naturally arise upon the Bill of Mutiny and Desertion, concerning the keeping up in Time of Peace a standing Army, and the Method of governing that Army, if any shall be judged requisite; which is a Subject of such Importance, that we think hardly any Thing of more Moment can fall under our Considerations, or that more requires the clearest Light that can be had in order to form a Judgment upon it, not unworthy a *British House of Peers*, zealous for that Freedom which has been delivered down to them from their Ancestors.

Strafford, *Aylesford*, *Northampton*,
Hereford, *Abingdon*, *Foley*,
Beaufort, *Bayle*, *Oxford and Mortimer*.

Die Jovis 19o Martii, 1729.

The House being moved, That an humble Address be presented to his Majesty, that he will be graciously pleased to order to be laid before this House a List of all Pensions payable by the Crown,

And a Question being stated thereupon,

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The previous Question was put, whether that Question shall be now put?

It was resolved in the Negative.

Dissentient

1*st*, Because, we think, this Question ought to have been put and passed in the Affirmative, since no Instance could be given, that the List of Pensions was denied, when called for by either House of Parliament; and we cannot imagine there can ever be a more proper Time to address to the Crown for the List to be laid before this House, when they are to enter upon the Consideration of a Bill which is calculated to prevent the Members of *the House of Commons* for the future from sitting or voting under any undue Influence.

2*dly*, Be-

2dly, Because, we conceive, the Refusal of complying with this Question will be misinterpreted without doors, whether the Bill shall pass or be rejected; for, in one Case, it will give just Reason to believe the List of Pensions was filled with Members of *the House of Commons*; and tho' this House would concur to prevent the Evil, they were tender of exposing the Names of particular Persons: In the other Case, it would raise a Jealousy, that there were too many Members of this House who were upon the List; which Aspersion ought, as we conceive, to have been obviated, by producing those Lists, and making them publick as in former Times has been frequently done.

Berkshire, *Beaufort*, *Foley*, *Oxford and Mortimer*, *Abingdon*, *Coventry*, *Litchfield*, *Aylesford*, *Batburst*, *Thanet*, *Strafford*, *Gower*, *Hereford*.

Die Sabbati 21o *Martii*, 1729.

Hodie 2a *vice lecta est Billa*, entitled, An Act for making more effectual the Laws in Being for disabling Persons from being chosen Members of, or sitting or voting in the House of *Commons*, who have any Pension during Pleasure, or for any Number of Years, or any Offices holden in Trust for them, by obliging all Persons hereafter to be chosen to serve for the Commons in Parliament to take the Oath therein mentioned.

It being proposed to commit the Bill,

After long Debate thereupon,

Contents 31 NotCont. 86 — The Question was put, whether this Bill shall be committed?

It was resolved in the Negative.

Dissentient

1st, Because all Objections against particular Clauses of Expressions in the Bill would have been regu-

regularly the Subjects of Debate in a Committee, and might have been there removed, if it should have appeared necessary, by making such Amendments to the Bill as the Wisdom of the House should have thought proper.

2*dly*, Because we conceive the general Design of this Bill to be highly reasonable, and of the greatest Importance to the Constitution of Parliaments; and are therefore extremely concerned it should not receive even the Countenance of a Commitment, when *the House of Commons*, who alone would have been immediately affected by it, had passed it, as we apprehend, with so much Regard to their Country, and so much Honour to themselves.

3*dly*, Because this Bill does, in Effect, enact nothing new, since it only enforces the Observation, and prevents the Evasions of former Laws, which were judged necessary for the Publick Good by so many Parliaments, and which we do not apprehend that our Experience since has given us Reason to look upon as less necessary for the same Purposes at this Time: By one of those Laws no Person, who has a Pension from the Crown during Pleasure, can sit in *the House of Commons*; but the Effect of this Law was, or might have been evaded, in great measure, by Grants of Pensions for certain Terms of Years, wherefore we presume that Examples have not been wanting. To remedy or prevent this Abuse, it was enacted by another Law, that no Person, who enjoys a Pension from the Crown for any Number of Years, shall sit in *the House of Commons*, under certain Penalties therein mentioned; but the Effect of this Law likewise is, or may be entirely evaded several Ways: It is or may be evaded by giving occasional Gratuities or making annual Presents, which will not be construed to fall under the Denomination of Pensions, and which are, however, in their Nature, and must be

be in their Effect, manifestly the same; it is or may be evaded also by the Difficulty of discovering and convicting those who presume to break it, since there is Ground to believe, by what has happened lately in this House, as well as on some other Occasions, that the Commons would find it difficult to obtain those Accounts which can alone shew what Pensions are paid to particular Persons. We observe further, that by the Laws now in Force all those who hold certain Offices therein specified, as well as those who hold any Offices erected since that Time, are made incapable of sitting in *the House of Commons*; and that whoever accepts of any Office or Employment under the Crown cannot sit in that House till he has been re-elected: Now it appears to us, that all those good and laudable Provisions may be render'd fruitless; that *the House of Commons* may be filled with Persons who are by Law incapable of sitting there; that the Electors may be deprived of that reasonable Option which the Law has given them, whether they will trust the same Person to represent them, after he has accepted an Employment, whom they elected to represent them when he had none; and all this may be effected by the single Expedient of getting an Office or Employment to be held by some Person who is not a Member of *the House of Commons*, in Trust for one who is. We shall not determine on publick Fame or private Suspicion, whether all or some of these Abuses and Evasions of so many Acts of Parliament have prevail'd or not; but since it is evident, that they may be easily introduced under a corrupt Administration, we must be of Opinion, that a Law which would prevent them as effectually as, we believe, the Bill sent up by the Commons would have done, could not have met with too great Encouragement from this House, nor have been passed too soon.

4thly, Be-

4thly, Because it appears to us, that the Arguments used against this Bill, drawn from the Necessity or Expediency of preserving an Influence to the Crown by the Power of rewarding, are either not at all to the present Purpose, or else are applied to prove, that an Influence guarded against by so many solemn Acts of Parliament should be admitted by the Connivance of Parliament; and, we think, it would be much more for the Honour of this House, if these Arguments were of real Weight, to be prevailed upon by them directly to repeal the Laws above-mentioned, than, by rejecting a Bill designed to render those Laws effectual, to seem, as we apprehend, to approve all the Evasions of them, which have been or can be invented and put in Practice.

5thly, Because we think, that altho' this Bill tends to restrain any legal and dangerous Influence over *House of Commons*, yet it leaves such an Influence entire to the Crown as will appear at least sufficient, when we consider that there are in the present *House of Commons* hardly less than Two Hundred Members who hold such Offices and Employments under the Crown, as would have continued to be tenable by them, if this Bill had passed; and even the Power of granting Pensions for Life to Members of Parliament openly would have still remained in the Crown.

6thly, Because, strictly speaking, all Influence over either House of Parliament, except that which arises from a Sense of those Duties which we owe to our King and Country, are improper; and the particular Influences which this Bill was intended to prevent are not only improper, but may, and naturally must, in Course of Time, become extremely pernicious both to the Crown and to the People: For, first, altho' this Influence appears to be that of the Crown, it may become virtually that of

of the Minister, and be applied to deceive the Prince as well as to oppress the People, if ever a corrupt Minister should have the Disposition of Places and the Distribution of Pensions, Gratuities, and Rewards; he may create such an Influence as shall effectually deprive the Prince of the great Advantage of knowing the true Sense of his People; and a House of Parliament being prevailed upon to approve such Measures as the whole Nation dislikes, so may be confirmed in the Pursuit of them, and for the Sake of an unworthy Servant, lose the Affections of his People, whilst he imagines that he both deserves and possesses them. In the next Place, if ever this improper Influence should obtain a certain Degree of Strength, these terrible Consequences must inevitably flow from it, That the worst Proposals for the Publick will be the most likely to succeed, and that the weakest Ministers will be the best supported; the Reason whereof we take to be extremely plain, since this improper Influence may be directed to any Purpose whatsoever, and will always be most exerted where it is most wanted, that is, in the Support of ill Measures and weak Ministers.

7thly, Because we agree, that as National or other Circumstances have exposed the Crown to any new Danger, the Security of Fidelity and Allegiance given by the Oaths of the Subjects to the Crown has been increased from Time to Time; and we therefore think, that, by a Parity of Reason, some greater Security than was formerly exacted should be now given to the Nation, by their Representatives, for a faithful Discharge of the Trust reposed in them; because this Trust, which is the same as it was in every other Respect, is come to be much greater than it was, in Respect to those heavy Taxes, which have been for many Years past, and which, as we fear, must be for all succeeding

ceeding Times annually laid by Parliament on the People, as well as to those immense Debts which have been contracted, and which we apprehend to have annually increased upon the Nation: The Service of *the House of Commons* was formerly a real Service, therefore often declined and always paid for by the People; it is now no longer paid for by the People, and so far from being declined, that it has been courted and sought after at great Expence. How far these Considerations, together with that of the vast Increase of the Civil-List Revenue, and of the Debts contracted on it in former Reigns, deserve to enforce the Reasons for exacting some new and stronger Engagements from the Members of *the House of Commons* to those whom they are chosen to represent, is, we think, sufficiently obvious.

8*thly*, Altho' it must be allow'd, that the multiplying of Oaths, without great and evident Reasons, ought to be avoided, yet an Oath being the most solemn Engagement which Men can be laid under, we judge it, on that very Account, the more proper to be imposed upon this important Occasion; nor will the Probability of its being broke through by the Iniquity of Mankind be an Argument of greater Force against this Bill, than against any other Law made for preventing any other Crime whatsoever.

Huntingdon,	*Aylesford*,	*Hereford*,
Bruce,	*Litchfield*,	*Craven*,
Plimouth,	*Maynard*,	*Oxford and Mortimer*,
Montjoy,	*Bristol*,	*Foyle*,
Northampton,	*Bathurst*,	*Coventry*,
Strafford,	*Beaufort*,	*Masham*,
Ker,	*Warrington*,	*Boyle*,
Sunderland,	*Gower*,	*Thanet*.
Berkshire,	*Abingdon*,	

Then

Then the Question was put, whether the said Bill shall be rejected?

It was resolved in the Affirmative.

Dissentient

1st, Because the evident Intention of this Bill was only to make a further Advance towards gaining that good End which the Legislature hitherto has, we fear, too weakly endeavoured to compass, the Prevention of Corruption, which, it must be owned, is an Evil of so mischievous a Nature, so apt to spread and grow epidemical, that a wise and virtuous People will apply the most timely and effectual Remedies that can be devised for the Cure of it, since a Nation once infected must soon get the Better of so contagious a Distemper, or it will soon get the Better of the Nation.

2dly, Because we can hardly frame in our own Minds a more reasonable Method than the Sanction of such an Oath of Purgation as was to have been taken by all the Members of *the House of Commons*, if this Bill had passed into a Law, to preserve that Part of the Legislature pure and free from that Kind of Bribery, which seems, from the Nature of it, to be the most pernicious, a secret and unavowed Pension; or what, however different in Name, would, we fear, be too much the same in Effect, an Office in Trust, or a clandestine Gratuity.

3dly, Because the Act of Parliament which passed last Year, tho' it contains some excellent Provisions against Bribery and Corruption, and ought, in our Opinion, ever to be held sacred, inviolable, and a fundamental Part of our yet free Constitution, wanted still something, as we judge, to make it more complete, by establishing an Oath for the Elected as well as the Electors; which being done by this Bill, we cannot but look upon it to have been a seasonable and necessary Addition to those

Laws already enacted for the same Purpose, in order to guard us more strongly against the powerful and malignant Influence of wicked, aspiring, and despotic Ministers, who can invent no Artifices so likely to subvert the Liberties of the People, as by corrupting those who are chosen to defend them.

4*thly*, Because, we apprehend, *the House of Commons* may think themselves unkindly treated by us for rejecting a Bill sent from them of great Consequence, by which they designed only to secure their own Honour and the Nation's Liberties, and that concerned only their own Members, without allowing it even the usual Forms of a Commitment; and the rest of our Fellow-Subjects will, we fear, hardly be charitable enough to think that one House of Parliament could be perfectly unbiassed, when it refused so proper an Expedient to make, in a great Measure, the other so.

Plimouth,	*Berkshire*,	*Litchfield*,
Beaufort,	*Strafford*,	*Ker*,
Montjoy,	*Aylesford*,	*Sunderland*,
Warrington,	*Bruce*,	*Bristol*,
Gower,	*Masham*,	*Craven*,
Bathurst,	*Maynard*,	*Huntingdon*,
Boyle,	*Coventry*,	*Abingdon*,
Hereford,	*Foley*,	*Northampton*,
Oxford and Mortimer,	*Thanet*,	

Die Lunæ 23° *Martii*, 1729.

Hodie 3ª *vice lecta est Billa*, entitled, An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.

The Question was put, whether this Bill shall pass?

It was resolv'd in the Affirmative.

Dissentient

Be-

Becauſe we think, that ſo large a Number as is propoſed to be kept up in this Kingdom for this Year, by this Bill, is not neceſſary for our Safety, as far as we can judge from the preſent Conjuncture of Affairs; and that a ſtanding Army in Time of Peace muſt be always burthenſome to the People and dangerous to their Liberties, for Reaſons often given by ſeveral Lords, and remaining upon the Journals of this Houſe, to which we chooſe to refer, rather than repeat them, in order to prove a Propoſition that we think almoſt manifeſt in itſelf, or at leaſt may eaſily be maintained by Arguments undeniably convincing, and ſo obvious, in our Opinion, that they muſt occur upon the leaſt Reflection to every *Engliſhman* who loves his Country and his Freedom.

Montjoy, *Abingdon*, *Beaufort*.
Strafford,

Die Veneris 17° *Aprilis*, 1730.

The Order of the Day for taking into Conſideration the State of the Nation being read,

It was moved to reſolve, That the maintaining of Twelve Thouſand *Heſſians* in the Pay of *Great Britain*, for the Year 1730, is burthenſome and unneceſſary.

Contents 21 . After Debate, the Queſtion was
Not Cont. 80 . put thereon? And

It was reſolved in the Negative.

Diſſentient

1*ſt*, Becaue, we think, the maintaining Foreign Troops in our Pay, where we have no Territory, and not only when we have no War, but immediately after a Peace concluded with one of the moſt conſiderable Powers in *Europe*, whilſt we are in Alliance with *Holland*, and are in ſtrict Friendſhip with *France*, the moſt conſiderable Power of all, is a Policy, that before this Inſtance of it can-

not be parallell'd, as far as we can recollect, in all our Annals, and muſt be owing to the Advice of Miniſters leſs cautious and leſs concerned for the true Intereſt of this Kingdom than their Duty obliged them to be; and we cannot, out of the Regard we owe to our Poſterity, conſent to it.

2*dly*, Becauſe the Importance of the Service, in which they are deſign'd to be employ'd, does no Way appear to us, and we fear it may create an Apprehenſion that they may be intended for Purpoſes that do not concern *Great Britain*; which is a Jealouſy (however ill founded) that we are perſuaded, from his Majeſty's Goodneſs, he will always be inclined to prevent for his Peoples Sake; and his Counſellors, we think, ought, if poſſible, to prevent for their own.

3*dly*, Becauſe, we think, it would be an unreaſonable Burthen upon the People at any Time, but we look upon it to be particularly ſo at this, whilſt we are ſtill heavily loaded with an immenſe National Debt, ſevere annual Taxes, oppreſſive and perpetual Exciſes, and have had of late the additional Misfortune of an unuſual and exceſſive Dearneſs of almoſt all Neceſſaries for Living, whilſt our Commerce, we cannot but fear, has been declining for ſome Years, and many valuable Branches of it running into other Channels, from whence we have but little Expectation of ever deriving them again into our own; when the dubious and unhappy Situation of Affairs, under which we have laboured of late, has reduced many ſubſtantial Merchants to Poverty, and has been productive of other ill Conſequences that, we apprehend, will be ſenſibly felt for ſome Time by the whole Nation; when the Sum which is to be allowed for the Maintenance of theſe Troops is at leaſt Six-pence in the Pound on every landed Man's Eſtate in *England*; and when we avowedly pay, at the ſame Time,

Time, greater Subsidies to other foreign Princes than our present Circumstances, in our Opinion, can well bear, or than any wise Reasons of State seem to require.

4thly, Because it does not appear to us, that his Majesty, either in any Speech or by any Message, has demanded any Supply for what seems to us so extraordinary a Charge; and he seems not to think them necessary for our Safety at Home, since he has lately disbanded some of our own; and we cannot find we are under any direct Stipulation to maintain them for the Safety of our Allies, Abroad, who notwithstanding the various Engagements and Multiplicity of Treaties, with which we have, within the Compass of a few Years, most incautiously, as we fear, entangled ourselves, have no Right to require Succours from us, till by some Molestation or hostile Attack the publick Tranquillity is disturbed; which Misfortune may still, as we hope, be prevented, if such Measures are taken as it becomes able and upright Statesmen always to pursue, if the Reputation of our Wisdom and Power is alone sufficient, as it ought to be, to procure us equal and useful Alliances, and it always will be, when the Affairs of the Kingdom are administer'd as they ought to be, and if to save our Friends from Dangers that perhaps are only imaginary, we do not run into real ones ourselves.

Berkshire,	*Northampton*,	*Boyle*,
Scarsdale,	*Abingdon*,	*Oxford and Mortimer*,
Strafford,	*Montjoy*,	*Aylesford*,
Maynard,	*Craven*,	*Willoughby de Broke*,
Coventry,	*Plimouth*,	*Gower*.
Huntingdon,	*Litchfield*,	

Die Martis 2° *Martii*, 1730.

Hodie 2ª *vice lecta est Billa*, entitled, An Act for making more effectual the Laws in Being for dis-

abling Persons from being chosen Members of, or sitting or voting in *the House of Commons*, who have any Pension during Pleasure, or for any Number of Years, or any Offices holden in Trust for them, by obliging Persons hereafter to be chosen to serve for the Commons in Parliament to take the Oath therein mentioned.

Proposed to commit the Bill,

After long Debate, the Question was put, whether this Bill shall be committed?

It was resolved in the Negative.

Then the Question was put, whether the said Bill shall be rejected?

It was resolved in the Affirmative.

Dissentient

1*st*, Because the Reasons which were enter'd on our Journals last Session for the Commitment, and against the Rejection of this Bill, can, in our Judgment, have nothing of Weight said against them, and, as we think, they want little to be added to them, but they seem to us to be strengthened upon this Occasion; and lest our second Refusal to concur with *the House of Commons* in what solely regards their own Members, and without any Arguments offered to them in a parliamentary Way for that Refusal, should be looked upon by them as an unkind, if not unprecedented Treatment, and should, in the Opinion of many disinterested Lovers of our ancient Frame of Government, too easily create in them a Resentment that might interrupt the Harmony between the two Houses, which is necessary for carrying on the most important Affairs of the Nation.

2*dly*, Because the Commons seemed to think the Bill is wanted, and we are persuaded it is earnestly desired by the People, and so wisely contrived by a solemn and strict Oath of Purgation to guard against secret Corruption in that Place, where, if ever

ever it ſhould be prevalent, its Conſequences would be moſt pernicious and extenſive, that we fear we ſhould be expoſed to ſome uncharitable Suſpicions, if we did not, in this moſt authentick Manner the Conſtitution of Parliament will allow, from a becoming Zeal to hinder the Infection of ſo miſchievous an Evil from ſpreading among others, give an undeniable Proof that we are untainted with it ourſelves.

3dly, Becauſe a Member of Parliament, who is not aſhamed to accept a Gratuity for any Service which he is aſhamed publickly to avow, muſt be conſcious to himſelf, as we fear, that he is guilty of an immoral Action; and therefore we conceive ourſelves obliged not only in Policy but in Conſcience too, to yield our Aſſent to a Bill that, as far as we could obſerve upon the moſt mature and ſerious Reflection, contained a proper Expedient, in this limited Monarchy, to preſerve both the Innocence and Independency of elected Legiſlatures, and that, we had reaſonable Hopes, would in a great Meaſure have prevented the Danger of an infamous Breach of Truſt of the higheſt Nature repoſed in every ſingle Member of the Lower Houſe for the Benefit of the whole Community; which we think is a Crime that ought to be dreaded by us, as good Patriots, and that we are bound to abhor, as ſincere Chriſtians.

4thly, Becauſe we cannot but, with Grief of Heart, lament the Loſs of that Opportunity which, by enacting this Bill into a Law, we aſſure ourſelves, his Majeſty would have embraced with particular Satisfaction of demonſtrating to all his Subjects, that he is incapable of ſuffering an improper Uſe to be made, by any of his Servants, of that large Revenue, which a Parliament, liberal beyond any Example of their Predeceſſors, ſo chearfully gave him, or of entertaining to himſelf the leaſt

Thought

Thought to the Prejudice of the Liberties or Properties of his People, by any unjustifiable Influence on their Representatives.

Bruce,	*Abergavenny*,	*Coventry*,
Berkshire,	*Strafford*,	*Bridgewater*,
Northampton,	*Thanet*,	*Abingdon*,
Plimouth,	*Warrington*,	*Boyle*,
Bedford,	*Aylesford*,	*Oxford and Mortimer*,
Foley,	*Litchfield*,	*Willoughby de Broke*,
Gainsborough,	*Cadogan*,	*Ancaster*, G. S.
Gower,	*Bristol*,	*Bathurst*.
Maynard,		

Die Jovis 17o *Februarii*, 1731.

A Message was brought from *the House of Commons* by Mr. *Sandys* and others, with a Bill entitled, *An Act for making more effectual the Laws in Being for disabling Persons from being chosen Members of, or sitting or voting in* the House of Commons, *who have any Pension during Pleasure, or for any Number of Years, or any Offices held in Trust for them*; to which they desire the Concurrence of this House.

The said Bill was read the first Time.

After Debate, proposed to reject this Bill.

Moved, That the same be read a second Time on *Tuesday* next.

Contents 25 } 40
Proxies 15 }
Not Cont. 78 } 95
Proxies 17 }

After further Debate, the Question was put, whether this Bill shall be read a second Time?

It was resolved in the Negative.

Dissentient'

For the Reasons enter'd in the Journals of this House the two last Sessions of Parliament, one the 21st of *March* 1729, and the other the 2d of *March* 1730.

Strafford,	*Craven*,	*Shaftesbury*,
Abingdon,	*Bathurst*,	*Litchfield*,

Foley,

Foley, *Maynard*, *Masham*.
Exeter, *Gower*, *Coventry*.

Die Jovis 24o Februarii, 1731.

A Message was brought from *the House of Commons* by Sir *William Strickland*, Secretary at War, and others, with a Bill entitled, *An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters*; to which they desire the Concurrence of this House.

The said Bill was read the first Time.

Proposed, That the same be read a second Time on *Tuesday* next.

After Debate, it was moved, That the said Bill be not read a second Time.

After further Debate, the Question was put, whether this Bill shall be read a second Time? And

It was resolved in the Affirmative.

Dissentient'

Because we conceive, that no Countenance ought to be given to any Act that may possibly lessen the Affections of the People to the King, they being his surest Guard; and we apprehend, that the keeping up, in Time of Peace, a greater Number of Forces than can be well governed by the established Laws, is inconsistent with the Notion of the Government of a free People.

Abingdon, *Bristol*, *Exeter*.
Strafford, *Litchfield*,

Die Martis 7o Martii, 1731.

The Order of the Day being read for the House to be put into a Committee of the whole House upon the Bill entitled, *An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters*.

Pro-

Proposed, That it be an Instruction to the said Committee, that the Number of Men specified in the said Bill do not exceed Twelve Thousand.

Contents 27
Not Cont. 88

After long Debate, the Question was put, whether such an Instruction shall be given to the said Committee?

It was resolved in the Negative.

Dissentient

1*st*, Because so great a Number of Troops as is established by this Bill was never before allowed by Parliament in Time of settled Peace, and no Reason was given in Opposition to the Instruction, but what, we conceive, must equally hold good in all future Times; for when can we hope to see a Session of Parliament opened with more satisfactory Declarations and stronger Assurances of Happiness and Security, than those contained in his Majesty's most gracious Speech from the Throne on the first Day of this Session: His Majesty is therein pleased to declare, that his Expectations are fully answered; that the general Tranquillity of *Europe* is restored and established; that the tedious Work is perfected and finished; that the Wounds which have been long bleeding are entirely healed; that the national Expence will be considerably lessened, and that the Nation shall reap the Fruits of his Endeavours. In such a Situation of Affairs, we conceive, that we could not act consistently with his Majesty's gracious Disposition to his People, agreeably to the Honour of this House, nor with that Regard we must always have for the Liberties of our Fellow Subjects, without endeavouring to reduce the Number of Troops specified in the Bill. *Abingdon.*

2*dly*, Because the settled State of Affairs at Home, and the great Duty and Affection his Majesty's Subjects have shewn to him on all Occasions, should, in our Opinion, be a full Answer to all Ar-

Arguments that can be drawn to justify the keeping up so great a Number of Troops, from any Apprehensions of a *Pretender* to the Throne; for if the present Circumstances of this Nation be compared with the Situation of Affairs after the Treaty of *Ryswick* or that of *Utrecht*, these Kingdoms will be found infinitely more secure in that Particular. In the first Period of Time, the late King *James* was living, who had an *Irish* Army in his Pay in *France*; many of his old Servants and Soldiers were then alive and active in *England* and *Scotland*; a potent Prince and Nation always supporting him, and ready at any Time to arm in his Cause: As to the second Period of Time, the *Pretender* was in the Neighbourhood of *France*, that the *French* King who had maintained him and his Family was still living, and the Protestant Succession had not then taken Place; yet in both these Points of Time, Half the Number of Troops allowed by the present Bill was not only thought by Parliament, but by Experience found, sufficient for our Security: How little Foundation then does there seem to be for continuing such a Number of Forces at this Juncture, when the *Pretender* has been long removed beyond the *Alps*, and a Prince on the Throne of *France* who seems more intent to make his own Dominions flourish by Trade, than out of a restless Ambition to disturb his Neighbours! Sufficient Reasons may be drawn from the present Situation of Affairs in that Kingdom, as well as those of *Spain*, to increase our Naval Force, but none, in our Opinion, for maintaining such an Army at Land; the present Royal Family is now (God be praised) firmly seated on the Throne, and nothing can shake it but an Administration which shall venture to depart from the Principles on which the Act of Settlement was founded; that Set-

Settlement was founded on Liberty, and by the Nature of Things must be coæval with Liberty.

3dly, Because it has hitherto been thought the Happiness of our Situation, as an Island, that we have not had the same Occasion for Numbers of Troops to defend us as those on the Continent; to prevent the Inroad of their Neighbours, they have been obliged to keep up standing Armies, which have generally been the Cause of the Loss of their Liberties, and always proved the sure Means of fixing their Chains upon them.

4thly, Because we are fully convinced that his Majesty will reign the more firmly in the Hearts of all his Subjects, the more he places his Confidence in them; and we conceive it to be an Indignity to him, to suggest that he cannot now be secure on the Throne, without the Assistance of a greater standing Force than ever his Royal Father was contented with in Times of less Tranquillity: Altho' it seemed to be the Tendency of some Arguments used against the Question, yet we can never be brought to believe, that this Nation is in Danger of being over-run by any Foreign Force; our Apprehensions are, that it only can be ruined and enslaved by a standing Army at Home; and we are justly jealous from the Experience of former Times, that the Crown itself, as well as the Liberties of the People, may be found at length to be at their Disposal.

Lastly, We refer to the four first Reasons enter'd on our Journal the 24th Day of *February* in the Year 1717, signed by many Lords of this House.

Boyle,	*Bristol*,	*Litchfield*,
Shaftesbury,	*Maynard*,	*Exeter*,
Foley,	*Tweedale*,	*Craven*,
Suffolk,	*Aylesford*,	*Tadcaster*,

North-

Northampton, *Scarſdale*, *Bathurſt*,
Bridgewater, *Ker*, *Gower*,
Thanet, *Coventry*, *Wa. and Nottingham.*
Strafford, *Carteret*,

Die Mercurii 29° *Martii*, 1732.

The Order of the Day being read for the Houſe to be put into a Committee upon the Bill entitled, *An Act for reviving the Duties on Salt for the Term therein mention'd.*

Moved, That it be an Inſtruction to the ſaid Committee, that they do receive a Clauſe to exempt all Salt uſed for manuring of Land from the Duties laid by the ſaid Bill.

Contents 21 After Debate, the Queſtion was
Not Cont. 74 put thereupon? And,

It was reſolved in the Negative.

Diſſentient'

Becauſe it has been found by Experience, during the Time the Duties upon Salt were taken off, that great Improvements have been made in ſeveral Parts of the Kingdom, by uſing Salt in manuring of Land, but by the Revival of thoſe Duties, without the Proviſion deſigned by this Inſtruction, there muſt be a total Stop put to all Improvements of that Nature; and we are convinced that in a few Years the Lands of *England* might have been raiſed, by the Uſe of this Manure, more than double what this Tax will produce to the Government; and we apprehend this to be a very improper Time to check the Induſtry of the People, and prevent their domeſtick Improvements, ſince, we fear, the national Wealth is not likely to be increaſed at this Time by any foreign Commerce. *Abingdon.*
Scarſdale, *Thanet*, *Northampton*,
Strafford, *Ker*, *Litchfield*,
Boyle, *Bathurſt*, *Suffolk*,
Wa. and Nottingham, *Shaftesbury*, *Coventry*,

Car-

Cartaret,	*Tweedale*,	*Masham*,
Bridgewater,	*Gower*,	*Bristol*.
Warrington,		

Moved, That it be an Instruction to the said Committee, that they do receive a Clause to exempt, from the Duties laid by the Bill all home-made Salt used in victualling of Ships.

Contents 21 After Debate, the Question was
Not Cont. 75 put thereon? And,

It was resolved in the Negative.

Dissentient

1*st*, Because the Duties to be laid by this Bill on all home-made Salt used for victualling of Ships increases the Expence of the Royal Navy, and is a heavy Burthen upon the Trade and Navigation of the Kingdom, and will very sensibly affect the Merchants, already under great Difficulties by reason of the Decay of Trade and the many grievous Losses they have sustained, and Hardships they have undergone, by Depredations, Seizures and Confiscations, too severely felt by most of the Traders of *Great-Britain*, and too publickly known to be doubted of.

2*dly*, Because this Duty upon our home-made Salt must occasion many of our Merchants to victual their Ships Abroad, to the Diminution of the national Wealth, and to the great Detriment of the landed Interest of this Kingdom.

Strafford,	*Scarsdale*,	*Litchfield*,
Wa. and Nottingham,	*Shaftesbury*,	*Bridgewater*,
Tweedale,	*Boyle*,	*Gower*,
Suffolk,	*Coventry*,	*Masham*.
Bristol,	*Bathurst*,	*Warrington*,
Ker,	*Carteret*,	*Northampton*,
Abingdon,	*Thanet*,	

Moved, That it be an Instruction to the same Committee, that they do receive a Clause to restrain any Person, during the Time he shall be concerned

cerned or employed in the charging, collecting, levying or managing any of the Duties to be granted by the Bill, from being a returning Officer, or voting or influencing any Elector to vote in Elections of Members to serve in Parliament.

Contents 21 After Debate, the Question was
Not Cont. 71 put thereon? And,

It was resolved in the Negative.

Dissentient

1st, Because the Officers employed in the Customs in the Excise, in other Branches of the Revenues, and in other Parts of the publick Service, are already vastly numerous; they compose, in Effect, a second standing Army, and are perhaps, in some Respects, more dangerous than that Body of Men properly so called; the Influence which they have in the Elections of Members to serve in Parliament has been too often felt to have been denied; and we presume, that Examples are not hard to find, where the military Forces have been withdrawn to create the Appearance of a free Election, and the standing civil Forces of this Kind have been sent to take this Freedom away. Should we suffer this Invasion on the Freedom of Election to continue much more to increase, it will be easy, in our Opinion, to demonstrate, that one vital Principal of our present Constitution and the Freedom of the *British* Government must be lost, since *the House of Commons* might indeed afterwards be a Representative of an Administration, or of one single Minister, but could no longer be a true Representative of the People. We think ourselves obliged therefore to oppose the Growth of so great an Evil upon every Occasion; and we apprehend that every such Increase of the Officers of the Revenue, as this Bill imports, is strictly, such an Occasion; and therefore we think the Instruction should have been agreed to, that we might not add

to that Evil which, we conceive, is already too great.

2dly, Because from the very Institution of Parliaments, at least from the Time when they began to be composed and held in the Manner and for all the Purposes they now are, the principal Aim of the Enemies of publick Liberty has been to enable the Crown to govern without them, or to corrupt their Members, or to destroy the Freedom of their Elections: From the same Time we may date the constant Care which has been taken by the Friends of the Publick Liberty to ward off those several Dangers, and the Laws which appear in our Statute-Books for regulating Elections of Members to serve in Parliament, as well as the Qualifications of the Electors and the Elected, are standing Monuments, which shew how early those Dangers began, and that the Opposition to them began as early: The Form of our Government, as it has been settled since the Revolution, leaves no longer Room to apprehend the first of the Attempts mentioned; the Wisdom of this House has seemed, by rejecting the Pension Bill three Times successively, to think the Laws already in Force sufficient to prevent the Second; but the Third must, in our Opinion, be looked upon to be a growing Danger, and to require extreme Watchfulness against the Consequence of it, as long as the many heavy Taxes, and the present Management of the publick Revenues keep up in all Parts of the Nation such an exorbitant Number of Receivers, Supervisors, Collectors, and other Tax-gatherers, who are maintained by the People; but are solely directed by the Treasury. The State of Property, and the Nature of Tenants anciently, the real as well as pretended Prerogatives in Times more modern, gave to the Crown, among other Influences, a very great one in the Elections of Members

Members of Parliament. Thanks be to God, and to the Virtue of our Forefathers, this State of Property is altered, these Tenures are abolished, and these Prerogatives are either taken away or limited, fined and fixed by Law; there will remain therefore no Means of destroying the Freedom of Elections, except those of Corruption, which we hope, may be rendered ineffectual, by the Law to which this House consented two Sessions ago, to the entire Satisfaction of the whole Nation; unless the Dangers we are apprehensive of should arise by establishing such Augmentations of the Number of Officers employed in the Revenue, without Restrictions to prevent them from being returning Officers, or voting or influencing any Elector to vote in future Elections.

3dly, Because we apprehend, that if any such Augmentations, without the aforesaid Cautions are suffered to be made, greater Danger will arise, from this new Influence, to the Freedom of Elections, and by Consequence to the Constitution of our Government, than ever did arise when the Prerogative was carried to the utmost height, and the Influence of the Crown was the most severely felt and complained of; we apprehend that this exorbitant Number of Officers may, one Time or other, effect the Destruction of those Liberties for the Preservation of which the Taxes were given, which these Officers are employed to collect. We apprehend, that by consenting to the Increase of these Officers, without Restriction, we shall contribute to such an Influence as may prove more fatal to Liberty than any of those which were formerly acquired, because it will be the Effect of a parliamentary Establishment, and will make its Way the more surely, by making it indirectly, secretly, and silently.

Strafford,	*Scarsdale*,	*Shaftesbury*,
Warrington.	*Bristol*,	*Bathurst*,
Litchfield,	*Boyle*,	*Suffolk*,
Coventry,	*Masham*,	*Bridgewater*,
Tweedale,	*Wa. and Nottingham*,	*Ker*,
Gower,	*Carteret*,	*Northampton*.
Thanet,		

Die Veneris 32o Martii, 1732.

Hodie 3a vice lecta est Billa, entitled, An Act for reviving the Duties on Salt for the Term therein mentioned.

After Debate, the Question was put, whether this Bill shall pass?

It was resolved in the Affirmative.

Dissentient'

1st, Because this Tax hath been found, by long Experience, to be most grievous for the Subject; for which Reason the Parliament lately, upon the Recommendation of his Majesty from the Throne, chose to repeal this, and the most oppressive Part of the Sinking Fund, for the Ease and Relief of the Subject: It may therefore seem very extraordinary, that in so short a Time, before the People have received much Benefit from it, in a Time of Peace, and without any Necessity (that appears to us) and when the Supply might be raised with less Charge and Inconvenience within the Year, we should have Recourse to a Tax too odious and oppressive to be continued, even for the Payment of the National Debt *Abingdon*.

2dly, Because we have Reason to believe the Parliament would not have cut off such a Branch of the Sinking Fund (which has been esteemed so sacred and necessary) if it could have been thought that it could ever have been applied to any other Use; and it may give Cause to apprehend, that the rest of the Sinking Fund may, by the same Means

and

and to the same Purposes, be occasionally diminished, till it is reduced too low to satisfy the publick Creditors, and discharge the immense Debts of the Nation: Which Opinion (if it should once prevail) would effectually destroy the Publick Credit, and involve the King and Kingdom in inextricable Difficulties.

3dly, Because this Tax, instead of being applied to the Payment of our Debts, occasions the Increase of them; and instead of raising the Supply within the Year, which is always most eligible, even in Time of War, if it can be done, and which Method (if it had been taken at first and pursued) had left the Nation free and unincumber'd to us and our Posterity, we now mortgage the Revenue, in Time of Peace, for a Term of Years, tho' but a short one, and yet what the People may notwithstanding apprehend will be continued, and be made a Precedent in all Supplies for the future; which Method of anticipating the Revenue must necessarily weaken the Government, by depriving it of the Means necessary for its Support in case of any sudden Emergency of War, or other publick Calamity, and in Consequence throw all the Weight of the Publick Expence upon the Landed Interest, which will pay dear for the Relief of One Shilling in the Pound only in this Year's Land-Tax.

4thly, Because it is liable to Frauds and great Deductions, which make the real Produce into the *Exchequer* little, tho' it raises much upon the People; and is a great Discouragement to the Fishery, and a Burthen upon the Trade and Navigation of the Kingdom.

5thly, Because it is not only a great Burthen to the Landed Estates, and particularly to the Grassing-Farms, but even a Prohibition to all Improve-

ments of Land, in those Parts where it is used for Manure.

6thly, Because as this Excise is proposed without any apparent Necessity, or Convenience to the Publick, or even any Real Advantage (as is suggested) to the Landed Interest, it must necessarily create a Jealousy in the People, that it is a Step and Introduction to a more general one; than which nothing can be more o s and dreaded, but a standing Army, that must necessarily attend the Execution of it.

7thly, Because *Scotland* being charged only with One Shilling *per* Bushel on Salt, which is not a Third Part of the Duty, introduceth an Inequality in Trade, contrary to that which seems established by the Articles of the Union, and tends to the keeping up invidious Distinctions between the two Parts of the United Kingdom. It may justly be doubted, if the Exemption from this Duty at the Time of the Union is a sufficient Reason for the like now, since the Duty was appropriated to the Debts of *England* contracted before, and is now revived for the current Service of this Year; yet, under the Appearance of Favour, the People of *Scotland* will, at least, pay in Three Years the full Sum of 24,672 *l.* for the saving of the One Shilling in the Pound Land-Tax, in the current Year, amounting to less than 12,000 *l.* So that *Scotland*, instead of being eased by this Bill, is doubly loaded and restrained in her Trade upon Account of this Distinction; and all the Bounties upon Exportation, payable now there by Law, are render'd precarious; and consequently this Tax should not, in our Opinions, have been imposed.

8thly, Because the Subjects are laid under grievous Penalties by this Bill, the incurring of which cannot, in many Cases, be prevented, notwithstanding

ſtanding the ſtricteſt Care; whereby the moſt innocent may be ſubjected to the Diſcretion and Mercy of the Commiſſioners and Officers of the Revenue, wherein the greateſt Partiality may be exerciſed.

9*thly*, Becauſe all Taxes which require a Multitude of Officers to be employed in collecting them, and which give thereby both Occaſion and Pretence to quarter Numbers of uſeleſs Subjects on the Labour and Induſtry of others, become ſo chargeable and oppreſſive, that they are hardly borne in the moſt arbitrary Governments; and that they ſeem repugnant to the very Nature of a Government conſtituted like ours. The ſole Expence of levying this Tax, added to the Intereſt, which muſt be paid for Loans made on the Credit of it, will appear, on a fair Calculation, ſufficient to diſcharge, in a competent Number of Years, the Principal and Intereſt of the whole Sum for which the Supply is given. In point of good Huſbandry therefore, we think, that a Tax of this Nature ſhould be rejected in any Country where Reaſon is not ſubdued by Force, and where private Will has not been yet received for Law: but in a limited Monarchy, like this of *Great Britain*, where the Powers of the Conſtitution are divided and ballanced, and yet the whole executive Power is intruſted to the Prince, we apprehend, that theſe frequent and great Augmentations of the Number of Officers appointed, directed and paid by the Authority of the Crown, tho' employ'd in collecting and managing Revenues, which are no Part of the Revenue of the Crown, ought to be eſteemed dangerous to Publick Liberty, and for that ſuperior Reaſon to be eternally avoided.

Bridgewater, *Wa. and Nottingham*, *Tweedale*,
Shafteſbury, *Coventry*, *Strafford*,
Carteret, *Bathurſt*, *Northampton*,

 Gower,

Gower,	*Warrington,*	*Tadcaster,*
Ker,	*Litchfield,*	*Briſtol.*
Scarſdale,		

Die Veneris 23o Februarii, 1732.

Hodie 1a vice lecta eſt Billa, entitled, An Act for making more effectual the Laws in Being for diſabling Perſons from being choſen Members of, or ſitting or voting in *the Houſe of Commons,* who have any Penſion during Pleaſure, or for any Number of Years, or any Office held in Truſt for them.

After Debate, propoſed to reject the Bill.

Moved to order, That the ſame be read a ſecond Time on *Tueſday* next.

Contents	25	39	After further Debate, the Queſtion was put, whether the ſaid Bill ſhall be read a ſecond Time?
Proxies	14		
Not Cont.	68	82	
Proxies	14		

It was reſolved in the Negative.

Diſſentient'

For the Reaſons enter'd in the Journals of this Houſe the 21ſt of *March* 1729, and the 2d of *March* 1730.

Scarſdale,	*Coventry,*	*Bruce,*
Northampton,	*Bridgewater,*	*Berkſhire,*
Foley,	*Gower,*	*Strafford,*
Bathurſt,	*Montjoy,*	*Litchfield.*
Oxford and Mortimer,	*Aylesford,*	

Die Jovis 8o Martii, 1732.

Hodie 3a vice lecta eſt Billa, entitled, An Act for puniſhing Mutiny and Deſertion, and for the better Payment of the Army and their Quarters.

After Debate, the Queſtion was put, whether this Bill ſhall paſs?

It was reſolved in the Affirmative.

Diſſentient'

Fo

For the Reasons enter'd on the Journal last Session against the Number of Men then and now to be established; which Reasons we refer to, and think the Circumstances of Time now do by no Means lessen the Force of them,

Bruce, *Strafford*, *Gower*,
Mountjoy, *Litchfield*, *Northampton*,
Bathurst, *Bristol*, *Foley*,
Masham, *Coventry*, *Berkshire*.
Oxford and Mortimer,

Die Mercurii 30o *Maii*, 1733.

Moved to resolve, That it is the Opinion of this House, that the Produce of the Sinking Fund should be applied for the future towards redeeming such Taxes as are most grievous to the Subject, oppressive to the Manufacturer, and detrimental to Trade.

Which being objected to, and Debate had concerning the same.

The Question was put upon the said Motion?

And it was resolved in the Negative.

Dissentient

1st, Because we conceive, that it would have been extremely for the Honour of the House, and for the Service of the Publick, to have enter'd this Resolution in our Books at a Time when we have so far consented, in Compliance with *the House of Commons*, to a Bill by which near Half a Million, collected from the Sinking Fund in several Years, is appropriated to the Service of the present Year.

2dly, Because the Sinking Fund being composed of the Surplussages of Funds originally granted as Securities to the Creditors of the Publick, and these Surplussages arising chiefly from a Reduction of Four *per Cent.* of the Interest granted them for the most Part at the Rate of Six *per Cent.* we cannot

not but think, that this Saving ought to be applied, according to the most inviolable Rules of Equity, and according to the known Design, and the repeated and solemn Engagements of Parliament, to a gradual Discharge of the Principal due to these Creditors of the Publick, who have parted with a Third of their Revenue in this View, and upon this Confidence.

3dly, Because we apprehend, that the Method of applying large Proportions of the Sinking Fund to the Service of the current Year must, in effect, perpetuate the Debts and Taxes which lie on the Nation, and is therefore injurious to the Publick. Had this whole Fund been strictly applied from the Beginning to its proper Use, we think it may be demonstrated, not only that much more of the National Debt might have been discharged, but that those Taxes which are most oppressive to the Poor, and most prejudicial to Trade, might have been already taken off, since upwards of 480,000*l.* *per Ann.* belonging, as we conceive, to this Fund, has been applied to other Uses.

4thly, Because we apprehend, that it cannot be for the Good of the Nation, nor consequently for the Honour of Parliament, to separate those Interests in the particular Approbations of the Sinking Fund, and which were so wisely and so justly united in the original and general Design of it; the Interest of the Nation, and the Interest of the Proprietors of the Nation's Debts; the former was intended to be eased, and for that Purpose the latter were to be cleared as soon as possible: If it be said therefore, that the Creditors of the Publick do not desire to be cleared no faster than they are in the present Method, nor object to the Application of any Part of the Sinking Fund to other Uses, we apprehend that no Argument, which ought to avail in a House of Parliament, can result from such

an Assertion; because we conceive, that in every Instance of this Kind, in every Application of the Sinking Fund, or of any Part of it, we are to look on ourselves as obliged not only to be just to the Creditors of the Publick, but to be careful of the Ease of the People, to keep the particular and general Interests united, as they originally were, and not to sever them: If in Fact, the Creditors of the Publick do not object to the Application of such large Proportions of the Sinking Fund to other Uses than to the Payment of the Debts, it may be said, that no Injustice is done them by any such Application, according to the known Maxim, *Volenti non fit injuria*; nay, it may be deemed for their private Interest to have such beneficial Mortgages continued to them as long as possible; and they may desire therefore not to be cleared any faster than they are likely to be in the present Method: But we apprehend, that it cannot be for the Interest of the Nation to have these Mortgages continued any longer than is absolutely necessary to discharge the Debts secured by them; and that we, by Consequence, who are Trustees for the People, ought to desire and endeavour that the Debts may be discharged, and the Loan of Mortgages be removed as soon as possible. In this Manner Publick Faith would be strictly kept, Justice would be done, and no Injustice could be done to the Creditors of the Publick: In the other Method, and by diverting such large Portions of the Sinking Fund, if it should be granted that no present Injustice was done to the Proprietors of the Publick Debts, yet it must be allowed, as we apprehend, that great Injury is done to the Nation, unless it can be proved that the unnecessary Continuation of Debts and Taxes is a National Benefit.

5thly, Because we conceive, that if the whole Produce of the Sinking Fund were not to be applied

plied to the Discharge of the Publick Debts, it would be much more for the Ease of Trade and Advantage of the Nation, that some of these grievous Taxes out of which it arises should cease, than that they should be continued to supply the current Service at Four *per Cent*, which might certainly be supplied by other Ways at a cheaper Rate. These Taxes are not only grievous in themselves, but almost intolerable, by the Manner of collecting them under the Laws of Excise; Laws so oppressive to the Subject, and so dangerous to Liberty, that every Man, who wishes well to his Country, must, in our Opinion, desire to see them put to a speedy End. Most of these Taxes were laid during the Necessity of two long and expensive Wars, and were granted only for Terms of Years, that so the Principal and Interest of the Loans made on them might be paid off in a certain limited Time: Thus the Nation consented to pay, in some Manner, a double Tax, in order to avoid the long and uncertain Continuance of such grievous and dangerous Impositions; and, according to the first Design, many of them would have been very near the Expiration of their Term at this Hour. The Wisdom of Parliament, indeed, thought fit afterwards to throw these Taxes, and the Method of discharging the Publick Debts, into another Form, which now subsists; but we cannot conceive, that this was done with a View of continuing our Taxes and our Debts the longer; on the contrary, we are sure, it was done in the View of discharging both the sooner; and it is this very View which, we apprehend, must be fatally disappointed, if the present Method of diverting any Part of the Sinking Fund from the Payment of the Publick Debts be suffered to continue.

6thly, Because we apprehend, that this Method may create the utmost Uneasiness in the Minds of his

his Majesty's Subjects, and may tend, if not timely prevented by the Wisdom and Authority of this House, to diminish their Affection for his Person and Government: Hitherto, whilst they have laboured under the Weight of Taxes, and groaned under the Oppression of Excise Laws, the Hopes of seeing speedily an End of both has been their sole Consolation; but nothing can maintain this Hope, except a due Application of the entire Sinking Fund to the Discharge of those Debts, for the Discharge of which these Taxes were intended and given: If some Part of this Fund therefore continue to be mortgaged off, and other Parts to be applied to the current Service, even in the midst of profound Peace, this Hope must sink, and Despair arise in its Stead. We insist with greater Concern and Earnestness on this Point, from our Observation of what has lately passed on the Occasion of Attempts made to extend the cruel and arbitrary Methods passed under the Laws of Excise, and naturally and necessarily, as we apprehend, flowing from them: If any new Law of this Kind had passed elsewhere, we persuade ourselves, it could not have prevailed in this House; but we think it the more incumbent upon us, after such an Attempt, and such National Resentment expressed against it (both which are of publick Notoriety) to promote, as effectually as we are able, the Quiet and Happiness of his Majesty's Reign, by cutting off any Hopes or Fears which may be still entertained that such a Project will some Time or other succeed; and to this good and laudable End we conceive that nothing would have contributed more than such a solemn Declaration of the Sense of this House as is contained in the Question.

Bedford, *Wa. and Nottingham*, *Shaftesbury*,
Craven, *Strafford*, *Bridgewater*,
Gainsborough, *Gower*, *Bruce*,
Ker,

Ker,	*Litchfield*,	*Carteret*,
Masham,	*Sunderland*,	*Bathurst*,
Thanet,	*Coventry*,	*Tweedale*.

Die Sabbati 20 *Junii*, 1733.

The House being moved to appoint a select Committee to examine into the Proceedings of the *South Sea* Company,

After Debate, the Question was put, whether a select Committee shall be appointed, of Twelve Lords to be chose by Ballot, to examine into the Transactions and Proceedings of the *South Sea* Company from the 2d Day of *February* 1720, and to lay their Report before this House?

It was resolved in the Negative.

Dissentient

1*st*, Because the present Debt of the Kingdom being almost wholly incorporated into the three great Companies, it behoves the Legislature, who are the proper Guardians of the Publick Creditors, to take all possible Care that they suffer no Injury in their Estates, by any Frauds committed in the Management of them; for tho' the Directors are chosen by a General Court, they are invested with such extensive Powers, that they are capable, by abusing their Trust, of doing infinite Mischief to the Proprietors, unless their Proceedings are vigilantly watched and controuled by that Supreme Authority under whose Sanction they act, and by which only such Practices can be effectually prevented or punished.

2*dly*, Because this House having been induced by the Reasons before mentioned, to begin an Inquiry into the Management of the *South Sea* Company, we apprehend that our Honour is engaged to answer those Expectations which the Publick had so justly conceived from it; and since the Advanced Season of the Year will not permit us to finish

finish this Examination during the present Session of Parliament, we apprehend, a Committee was the only proper Way left to unravel such dark and intricate Affairs, which require a very nice Inspection into many voluminous Books; it appearing to us, by what we have seen and heard at our Bar, that the Accounts of the Company have been kept in a most confused, irregular and unwarrantable Manner, in order, as we apprehend, to conceal Frauds and defeat all Inquiries.

3dly, Because the great Distresses and Calamities in the Year 1720, having been occasioned by the Directors at that Time declaring such extravagant Dividends as the Company was not able to support, the Legislature have, in all their Acts relating to this Corporation, which have passed since that Time, taken the utmost Care to prohibit and restrain the Directors from being guilty of the like Practices; yet, notwithstanding this, they have been so far from taking Warning by the Examples made of their Predecessors, that it appears, by the Accounts laid before this House, that altho' by the Cash which came into their Hands, and by the Sale of Four Millions of Stock to the *Bank*, and by the Loans of Stock and otherwise, they were sufficiently enabled to pay off the Debt of Five Millions Four Hundred Thousand Pounds then owing by the Company, as in Justice and Prudence they ought to have done; yet influenced, as we have Reason to believe, by the corrupt Views of some few, who may have assumed to themselves the whole Management of the Affairs of this Corporation, they left a great Part of their Debt on Bonds at Interest unpaid; and by unwarrantable Dividends out of the Money, in order to give a fallacious Value to their Stock, Multitudes of his Majesty's Subjects have been defrauded; and they have, without the Knowledge of the Proprietors, not only dissi-

pated

pated above Two Millions Three Hundred Thousand Pounds received from the Directors Estates, but they have likewise brought a new Debt of Two Millions upon the Company, and thereby diminished the Capital of every Proprietor's Stock; by which Means great Injury and Injustice have, in numerous Instances, been done to Orphans and the Reversionary Heirs of these Estates, to the great Dishonour of the Publick Faith, and Discredit of the Nation.

4thly, Because, altho' the Directors applied to Parliament, in the Year 1727, for their Authority to dispose of the Produce of the Estates of the forfeiting Directors, pretended to be then remaining in their Hands; yet it appears, by the Accounts now before us, that the greatest Part of this Money had been before actually divided out in extraordinary Dividends; and when, in order to give some Colour to these Proceedings, they obtained an Act of Parliament to dispose of these Effects, they never called a General Court to acquaint them with the State of this Account, or to take their Directions for the Application of any remaining Part of these Estates, notwithstanding they were expressly required so to do by the said Act.

5thly, Because there is Reason to believe, from a general View of the same Accounts, that there are many Articles, hitherto unexamined, under which a Multitude of Frauds may be concealed, such as buying, selling, creating, and issuing of Bonds; employing irregularly the Cash of the Company which lay in their Hands, whilst the Proprietors were paying Interest for Money borrowed of the *Bank*; transacting Stock Abroad, and selling fictitious Stock at Home, with many other Practices of the like Nature, too long and various to be particularly explained: For these Reasons, we conceive, it was absolutely necessary to have appointed a Com-

a Committee, as the only Method to distinguish the few who probably are criminal, from many Gentlemen who may at present lie unjustly under the same Imputation, especially at a Time when a Bill was actually depending for dividing the Capital of this Company, Three-fourths into Annuities, and leaving the remaining Quarter to be a Trading Stock, with a large Debt and Demands upon it unliquidated, and the Value of it consequently unknown; which, should it pass into a Law, will, in all Probability, promote and encourage the infamous Practice of Stockjobbing, to the Ruin of great Numbers of his Majesty's Subjects.

6thly, Because the other House have frequently appointed Commissioners to inspect the Publick Accounts during the Interval of Parliament, as the only practicable Method of arriving at any Knowledge in such Affairs; a Method, indeed, too much disused of late Years: We therefore apprehend, that no just Objection either was or could be made to a Committee, which is perfectly agreeable to the Nature of our Constitution, cannot be of any Prejudice to the Company, and, being confined to a particular Inquiry, can give no Grounds of Apprehension to any but those who are afraid it may lead to further Discoveries of iniquitous Contracts and corrupt Bargains in the Settlement and Transactions of this Company since the Year 1720, which some Persons have endeavoured with so much Industry to conceal.

7thly, Because we think it highly expedient, at this Time, to vindicate the Publick Faith of the Nation, lest Foreigners should be induced, by the many Instances of Fraud and Corruption which have been of late discovered in other Corporations, suddenly to withdraw their Effects out of our Funds,

and thereby totally destroy Publick Credit, and plunge us into inextricable Difficulties.

8*thly*, Because the Arts made Use of to divert us from our Duty, and to defeat this Inquiry, give us Reasons to prosecute it with fresh Vigour; for Impunity of Guilt (if any such there be) is the strongest Encouragement to the Repetition of the same Practices in future Times, by chalking out a safe Method of committing the most flagitious Frauds under the Protection of some corrupt and all-skreening Minister.

9*thly*, For these Reasons we think ourselves under an indispensable Obligation to vindicate our own Honour, by leaving our Testimonies in the Journals of this House, that we are not under the Influence of any Man whatsoever, whose Safety may depend on the Protection of Fraud and Corruption, and that we enter'd upon this Inquiry with a sincere and just Design of going to the Bottom of the Evil, and applying to it the most proper and effectual Remedies.

Bedford,	*Tweedale*,	*Chesterfield*,
Strafford,	*Cobham*,	*Carteret*,
Bathurst,	*Coventry*,	*Berkshire*,
Litchfield,	*Stair*,	*Bruce*,
Suffolk,	*Montrose*,	*Marchmont*,
Shaftesbury,	*Bridgewater*,	*Masham*,
Wa. and Nottingham,	*Thanet*,	*Gower*,
Craven,		

Die Mercurii 13° *Februarii*, 1733.

The Duke of *Marlborough* presented to the House a Bill entitled, *An Act for the better securing the Constitution, by preventing the Officers of such Land Forces as shall at any Time be allowed by Authority of Parliament, from being deprived of their Commissions, otherwise than by Judgment of a Court Martial*

Martial to be held for that Purpose, or by Address of either House of Parliament.

And the same was read.

Moved to order, That the said Bill be read a second Time on *Tuesday* next.

Which being objected to, and it being also moved to reject the said Bill,

Contents	49	62	After Debate, the Question was put upon the first Motion? And
Proxies	13		
Not Cont.	78	100	It was resolv'd in the Negative.
Proxies	22		

Dissentient'

1*st*, Because the Exigence of Affairs in Times past, or Complaisance of former Parliaments, have for several Years occasioned the keeping up a considerable Body of Land Forces in this Kingdom; and as various Events may happen to oblige future Parliaments to pursue the same Measures, which nothing but the utmost Necessity can justify, they being repugnant to the Nature of our Constitution, and dangerous to the Liberties of a free People; and as the whole Disposition of the said Forces is absolutely in the Crown, we cannot but think it highly reasonable, when so great an Increase of Power and Influence, which was formerly occasional and rare, comes to be annually vested, and constantly exercised by the Crown, that some such Limitations as proposed by this Bill are not only proper but necessary; and we are confirmed in that Opinion, by the Doctrine so often and so strongly laid down in this House, that the greatest Danger to this Nation, from a standing Military Force, must arise from the Abuse of the Power which now subsists of cashiering Officers, without any Crime proved or alledged, and of garbling the Army at Pleasure; and we heartily wish that nothing had since happen'd to put us in Mind of that Doctrine.

2*dly*, Because the employing or removing of all General Officers would have been left in the Crown, if this Bill had passed into a Law; for the enacting Clauses were only to this Purpose, (That no Colonel or other Officer of inferior Degree, having his Commission from the Crown, shall be cashiered or removed other than to an higher Post, or discharged from his Commission, or be deprived of the Pay belonging to the same, in any other Manner than by a Court Martial to be appointed by a Commission under his Majesty's Sign Manual to any Officer not under the Degree of a Field Officer.) At the same Time there is a Provision in the Bill, (That nothing shall extend to prevent his Majesty or his Successors from disbanding, breaking or reducing all or any of the Regiments, Troops or Companies now in Being, or which shall or may be raised hereafter); and it is further provided, (That his Majesty and his Successors may remove any Officer upon an Address of either House of Parliament.) We conceive therefore, that, as those Posts would still have remained, upon all Vacancies, in the sole Disposal of his Majesty, and the Persons now possessing them are liable to be removed for any Breach or Neglect of their Duty, by a Court Martial, or by Address of either House of Parliament, the Prerogative of the Crown would no otherwise be abridged or altered than it has been on many other Occasions, particularly in that Instance of making the Judges to hold their Places, *Quamdiu se bene gesserint*, which was formerly *during Pleasure only*; which Alteration has been always approved, and, we hope, will in no Time to come ever be attempted to be repealed.

3*dly*, Because the Practice of all the Nations in *Europe*, even where the Government is most arbitrary, justifies the Intention of this Bill; for no Instance can be produced in any other Kingdom or

Stat

State (as we believe) where Officers are cashiered or deprived of their Commissions, otherwise than by the Judgment of a Court Martial: How much stronger Reason then have we of this Nation to establish such a Rule, since our Officers are, many of them, in a Capacity of having a Share in the Legislature, where it is absolutely necessary for the Preservation of the Constitution, that every Member should be free and independent, and more particularly at this Time, when we find the Number of Officers having Seats in Parliament far greater than it ever was in Time of War, when above Three Times the Number of the present Troops were kept on Foot.

4thly, Although it was objected in the Debate, That in Time of Danger (upon Suspicion of traiterous Practices) it might be necessary to remove an Officer from his Post, though the Informations might not be ready to be produced, or proper to be laid before a Court Martial, and yet by such Officer's continuing in his Post, great Mischief might accrue to the Publick; we apprehend that Objection received a full Answer, That in such a Case an Officer might be immediately put under Arrest, or sent to some other Post where he could not be dangerous. And, we conceive, such a Method of Proceeding will always be thought most proper where the Crime is only suspected, but not capable of legal Proof; for it must be allowed as unjust to condemn a Man upon Suspicion only, as it would be unreasonable to let a Man continue in Power who is justly under Suspicion. That Part of the Prerogative, which will be always esteemed the brightest Jewel of the Crown, the Power of confering Grace and Favour, would have remained entire, had this Bill passed into a Law; and only the disagreeable Part of inflicting Punishments was designed to be limited, or rather secured by this

Bill, from being turned to any ill Use, by the private Whispers of some malicious or vindictive Minister, who may at any Time hereafter get Possession of the Royal Ear.

5thly, Because, the Time for the new Elections drawing near, we look upon this as the most favourable Opportunity of passing so necessary a Bill, since hereafter the very great Increase which may probably happen of the Number of Officers i Parliament may render the future passing of such a Bill totally impracticable; for while the Officers of the Army remain in their present precarious Situation, they may be intimidated, by the Threats of an unforgiving Minister, from voting even for a Bill of this Nature, and choose to purchase present Security at the Price of their own Interests and their own future Independence in Parliament, in which the Liberties of their Country are so much concerned.

6thly, Because we conceive the small Degree of Independence proposed to be given to the Officers of the Army, by this Bill, to be necessary to prevent their being exposed to Temptations, in which (though we are ready to do Justice to the Sentiments of Honour and Virtue in those Gentlemen) we should rather lament than wonder to find a discouraged and indigent Virtue yield to a criminal but prosperous Compliance; especially should we have the Misfortune to see an Imperious, All-grasping and Power-engrossing Minister, who may make their political Submission to his oppressive and destructive Schemes, the only Test of their Merit, and the only Tenure of their Commissions.

Wa. and Nottingham,	*Marchmont,*	*Bathurst,*
Warrington,	*Clinton,*	*Bruce,*
Bridgewater,	*Masham,*	*Suffolk,*
Berkshire,	*Tweedale,*	*Marlborough,*
Montrose,	*Chesterfield,*	*Denbigh,*

Car-

Carteret,	*Ker*,	*Tadcaſter*,
Cobham,	*Scarſdale*,	*Boyle*,
Strafford,	*Bedford*,	*Litchfield*,
Weymouth,	*Bolton*,	*Cardigan*,
Foley,	*Craven*,	*Gower*,
Griffin,	*Oxford and Mortimer*,	*Willoughby de Broke.*

Then the Queſtion was put, whether the aforementioned Bill ſhall be rejected?

It was reſolved in the Affirmative.

Moved, That an humble Addreſs be preſented to his Majeſty, to deſire that he will be graciouſly pleaſed to acquaint this Houſe, who adviſed his Majeſty to remove the Duke of *Bolton* and the Lord Viſcount *Cobham* from their reſpective Regiments, and what Crimes were laid to their Charge.

And the ſame was likewiſe objected to.

Contents 48 Not Cont. 77

After further Debate, the Queſtion was put thereupon?

It was reſolved in the Negative.

Diſſentient

1ſt, Becauſe we conceive, that it is the inherent Right of this Houſe to addreſs the Crown, to be informed who are the Adviſers of any Meaſures that may be prejudicial to his Majeſty's Government, or dangerous to the Liberties of the Nation.

2dly, Becauſe the Removal of two Officers of ſuch Rank and Dignity, and of ſuch known Fidelity to his Majeſty's Perſon and Government, without any Cauſe aſſigned, or any known or alledged Neglect of their Duty, gave the greateſt Alarm to many of his Majeſty's moſt faithful Subjects; we therefore thought it for his Majeſty's Service to give him this Occaſion to publiſh to the World the juſt Grounds of his Diſpleaſure, or to detect the Calumny of their Accuſers, and conſequently to withdraw his Confidence from ſuch pernicious Counſellors.

3dly, Because that, as the Practice of displacing Officers has grown more frequent in Proportion to the Increase of their Numbers in both Houses of Parliament, the World may entertain (however unjustly) an Opinion that the free Use of their Votes has been the real Cause of their Disgrace; and the more so, since most of the Persons who have been removed have happen'd to be Members of one or other House of Parliament.

4thly, Because Applications of this Nature to the Crown may hereafter protect many of his Majesty's faithful Subjects from the secret and malicious Representations of some Minister in future Times, who though unrestrained by Sense of Truth, regardless of his Prince's real Interest, and animated only by his own Passions, may however be checked by the just Apprehensions, that the Applications of Parliament may lay open his Calumnies, and bring upon himself the Disgrace he had prepared for others.

Wa. and Nottingham,	*Bruce*,	*Bathurst*,
Berkshire,	*Denbigh*,	*Suffolk*,
Craven,	*Anglesey*,	*Scarsdale*,
Marlborough,	*Bridgewater*,	*Montjoy*,
Montrose,	*Tadcaster*,	*Ker*,
Chesterfield,	*Cardigan*,	*Bedford*,
Boyle,	*Abingdon*,	*Northampton*,
Oxford and Mortimer,	*Masham*,	*Strafford*.
Warrington,	*Foley*,	*Griffin*,
Bristol,	*Gower*,	*Weymouth*,
Tweedale,	*Litchfield*,	*Marchmont*,
Clinton,	*Carteret*,	*Willoughby de Broke*,

Dissentient'

Because we are not conscious, that any Neglect or Breach of our Duty can be laid to our Charge, much less any Want of Zeal and Attachment for his Majesty's Person and Government; we therefore must testify our earnest Desire, that this Motion

tion had passed in the Affirmative, that we might have had an Opportunity given us of knowing our supposed Crimes and Accusers, and, we hope, of justifying ourselves to his Majesty and the World.

Bolton, *Cobham*.

Die Mercurii 6° Martii, 1733.

The Order of the Day being read for the House to take into Consideration Matters relating to the Election of the Peers of that Part of *Great Britain* called *Scotland*.

Moved to resolve, That no Peer who hath claimed, or shall claim Right by Succession to any Peerage of *Scotland*, other than a Descendant of the Body of a Peer or Peeress, who has been in the Possession of the Peerage claimed since the 25th of *April*, 1690, shall be admitted to vote at any Election of a Peer or Peers to sit in Parliament for that Part of *Great Britain* called *Scotland*, until his Right and Title be claimed and determined in this House.

After Debate, ordered, That on *Monday* next this House shall be put into a Committee of the whole House, to take into Consideration Matters relating to the Election of the Peers of that Part of *Great Britain* called *Scotland*.

Then it was moved to resolve, for the better securing the Freedom of the Election of a Peer or Peers to sit in Parliament of *Great Britain* on the Part of *Scotland*, That the Election shall be by way of Ballot.

And a Question being stated thereupon,

Contents 49 } 63
Proxies 18 }

Not cont. 75 } 96
Proxies 21 }

After further Debate, The Question was put upon the said Motion? And It was resolv'd in the Negative.

Dissentient.

1*st*, Because this Motion tending only to make a Variation in the Manner of electing the Peers for *Scotland*,

the Peerage of *Scotland* in Parliament, is an high Insult on the Justice of the Crown, an Incroachment on the Freedom of Elections, and highly injurious to the Honour of the Peerage.

And a Question being stated thereupon,

After Debate, it was moved to put the previous Question.

Contents	83	60
Proxies	17	
Not Cont.	73	99
Proxies	26	

And after further Debate, the previous Question was put, whether the said stated Question shall be now put? And

It was resolved in the Negative.

Dissentient

1*st*, Because we apprehend, that this Resolution, being only declaratory of indeniable Truths, ought not to have been avoided by a previous Question, since, we fear, the leaving it undetermined may tend to encourage Practices dangerous to our Constitution in general, and to the Honour and Dignity of this House in particular.

2*dly*, Because we think, this House cannot shew too strong an Abhorrence of Practices which, whether they have been committed or not in former Elections, are yet of such a Nature as may possibly be attempted hereafter by a Minister, who may find it necessary to try all the Methods to secure a Majority in this House, either to promote his future ambitious Views, or to screen his past criminal Conduct.

Suffolk,	*Cardigan*,	*Aylesford*,
Marchmont,	*Foley*,	*Cobham*,
Shaftesbury,	*Litchfield*,	*Bruce*,
Gower,	*Tweedale*,	*Oxford and Mortimer*,
Wa. and Nottingham,	*Abingdon*,	*Montrose*,
Bedford,	*Strafford*,	*Craven*,
Ker,	*Bathurst*,	*Bolton*,
Bristol,	*Thanet*,	*Carteret*,
Tadcaster,	*Stair*,	*Chesterfield*,

Coventry,

Coventry, *Marlborough*, *Griffin*,
Berkshire, *Northampton*, *Willoughby de Broke*.

Die Martis 26o *Martii*, 1734.

The House was moved, That the Select Committee appointed the Seventh Instant to consider of the Representation of the Commissioners for Trade and Plantations relating to the Laws made, Manufactures set up, and Trade carried on in any of his Majesty's Colonies and Plantations in *America*, which may have affected the Trade, Navigation and Manufactures of this Kingdom, be impower'd to inquire of the proper Methods for the Encouragement and Security of all Trade and Manufactures in the said Plantations, which no way interfere with the Trade of *Great Britain*, and for the better Security of the Plantations themselves.

And a Question being stated thereupon,

It was proposed after the Word [Encouragement] to leave out [and Security].

Which being objected to, and Debate had thereupon,

Contents 28
Not Cont. 52

The Question was put, whether the Words [and Security] shall stand Part of the Question?

It was resolved in the Negative.

Then it was proposed, That these Words at the latter End of the Motion, *viz* [and for the better Security of the Plantations themselves] be left out.

But the same being objected to,

The Question was put, whether these Words shall stand Part of the Question? And

It was resolved in the Negative.

Dissentient

Because we apprehend, that if the Safety of the Plantations themselves is not thought a Matter worthy the Consideration of the Parliament, it is of

of little Consequence to consider of their Laws, Manufactures or Trade.

Bedford,	*Carteret*,	*Tweedale*,
Bristol,	*Bathurst*,	*Thanet*,
Wa. and Nottingham,	*Tadcaster*,	*Gower*,
Berkshire,	*Bolton*,	*Stair*,
Litchfield,	*Northampton*,	*Marchmont*,
Aylesford,	*Craven*,	*Coventry*.
Strafford,	*Montrose*,	*Cardigan*.
Abingdon,		

Then the Question was put, whether the said Committee shall be impowered to inquire of the proper Methods for the Encouragement of all Trade and Manufactures of the Plantations in *America*, which no Way interferes with the Trade of *Great Britain*, or which may be of Use to *Great Britain*?

And it was resolved in the Negative.

Dissentient.

1*st*, Because we apprehend, that the new Powers proposed to be given to the Committee, were not only expedient, but absolutely necessary, since by the Account given by several Lords who attended the Committee (and contradicted by none) it appear'd to the House, That from the Informations of Merchants of undoubted Credit, *Jamaica*, *Barbadoes*, and the *Leeward Islands* were in so defenceless a Condition, that they might be taken in Four and twenty Hours; and we conceive, that such imminent Danger of such valuable Possessions required an immediate and minute Examination, in order to discover the Causes and Nature of the Danger, and to apply proper and adequate Remedies.

2*dly*, Because we conceive, that the chief Reason urged in the Debate, against this Inquiry, is the strongest Argument imaginable for it, *viz*. That it might discover the Weakness of those Islands in the present

present critical Juncture, and invite our Enemies to invade them; whereas we think that this critical Juncture calls upon us to put our Possessions in a State of Defence and Security in all Events; and since we cannot suppose their present defenceless Condition is unknown to those Powers who are the most likely to take the Advantage of it, we apprehend it to be both prudent and necessary, that those Powers should at the same Time know, that the Care and Attention of this House was employed in providing for their Security. We likewise conceive, that such an Argument may tend to debar a House of Parliament from looking into any of our Affairs, either Foreign or Domestic, if in any Transaction, at any Time, there shall appear to have been a weak, negligent or treacherous Management, the Directors will never fail to lay hold of that Argument to stop any parliamentary Inquiry, and the Fear of discovering a National Weakness may be urged only to prevent the Detection of ministerial Negligence or Guilt.

3dly, Because we have found by Experience, that we can never be too attentive to the Preservation of the Possessions and Dependencies of this Kingdom, since Treaties alone will not bind those Powers, who, from the Proximity of their Situation, from favourable Opportunities, or other Inducements, may be tempted to attack or invade them; but the Interposition of a *British* Parliament will be more respected and more effectual than the occasional Expedients of fluctuating and variable Negotiations, which in former Times have been often more adapted to the present Necessities of the Ministers than to the real Honour and lasting Security of the Nation.

4thly, Because, we apprehend, the debarring this House from any Inquiry into the Conduct of Ministers for the Time past; or from giving their Advice

Advice in Matters of great Concern to the Public for the Time to come, tends to destroy the very Being of this House, and of Consequence the whole Frame of our Constitution; and how melancholy a View must it be to all his Majesty's Subjects to see the private Property of so many Particulars, and so advantageous a Trade to the Whole, refused to be brought under the Inspection of this House; and yet (as far as it appears to us) totally neglected by the Administration! And we are the more surprised to find this Backwardness with Regard to the Interest of our Colonies, since we are persuaded that the Ballance of Trade at present is against us in all Parts of the World, and only compensated in some Degree by what we gain by our *West India* Trade; neither can we allow that they ought to be left to look after themselves, since they have a Right to claim even more than the Protection of their Mother Country by the Wealth they annually transmit to it, and the great Duties they pay, to the Increase of the Publick Funds and of the Civil List; and we are fully convinced, that if this beneficial Trade should once be lost, it will be irrecoverably lost, to the infinite Damage of this Kingdom; for though the Islands should be restored to us afterwards, the Utensils and Stock of Negroes being carried away, it would take up a long Tract of Time, and would be a very great Expence to the Publick, to reinstate them in their present Condition; we rather think it impracticable to restore them, though we can by no Means suppose it difficult, by timely Precautions, to prevent their Destruction.

Chesterfield,	*Bathurst,*	*Thanet,*
Bedford,	*Coventry,*	*Tweedale,*
Berkshire,	*Bristol,*	*Carteret,*
Tadcaster,	*Strafford,*	*Bolton,*
Northampton,	*Litchfield,*	*Cardigan,*

Foley,

Foley,	*Montrose,*	*Abingdon,*
Gower,	*Marchmont,*	*Craven.*
Wa. and Nottingham,	*Stair,*	

Die Veneris 29o *Martii,* 1734.

The Order of the Day being read for taking into Consideration his Majesty's most gracious Message delivered to this House Yesterday,

It was moved to resolve, That an humble Address be presented to his Majesty, to express the dutiful and grateful Sense which this House conceives of his Royal Care and Attention for the Honour and Security of his Kingdoms; to declare their unalterable Fidelity to his Majesty, and their earnest Desire, that his Endeavours for an Accommodation may be effectual; and that his Majesty may in all Events be in a Condition to make good such Engagements as Honour, Justice and Prudence may call upon him to fulfil or contract; and that his Dominions may not be exposed to any desperate Attempts, especially at a Time when it may be impossible for the great Council of the Nation to be immediately convened; to give his Majesty the strongest Assurances, that this House will chearfully support him in making such farther Augmentation of his Forces, either by Sea or Land, as shall be necessary for the Honour and Defence of his Kingdoms, and in concerting such Measures as the Exigency of Affairs may require; and to return his Majesty the Thanks of this House for his gracious Declaration, that an Account of any Augmentations made and Services performed shall be laid before the next Parliament: This House reposing an entire Confidence in his Majesty's Royal Wisdom and paternal Concern for the true Interests of his People.

Which being objected to, after long Debate thereon,

Contents	76	101	The Question was put whether such an Address shal be presented to his Majesty?
Proxies	25		
Not Cont.	39	58	It was resolv'd in the Affirmative.
Proxies	19		

Dissentient'

Because we are of Opinion, that no free People should, on any Occasion whatever, vest in any Person an unlimited Power for an indefinite Time, and whenever they do, they at the same Time resign their Liberty.

Abingdon,	*Aylesbury,*	*Chesterfield,*
Bristol,	*Shaftesbury,*	*Boyle,*
Northampton,	*Foley,*	*Bedford,*
Montrose,	*Marchmont,*	*Litchfield,*
Cobham,	*Bathurst,*	*Carteret,*
Strafford,	*Graham,*	*Stair,*
Weymouth,	*Burlington,*	*Willoughby de Broke,*
Ker,	*Cardigan,*	*Gower,*
Berkshire,	*Coventry,*	*Montjoy,*
Thanet,	*Tweedale,*	*Craven,*
Oxford and Mortimer,	*Clinton,*	*Wa. and Nottingham.*

Dissentient'

1*st*, Because we conceive, an Address of this Kind, impowering the Crown to raise Men and Money, without specifying the Number of the Sum, is unwarranted by any Precedent, and is of the most dangerous Consequence; for it seems to us totally to subvert the very Foundation of our Constitution, the Wisdom of our Ancestors having provided many regular Steps and solemn Forms for granting Supplies to the Crown: Whereas this new Method of a sudden Address, upon a Message, at once frustrates and eludes all those wise and ancient Precautions.

2*dly*, Because the History of several Countries, formerly free, furnishes us with many fatal Examples of the Abuse of such unlimited Powers, whenever the Estates of those Countries have transferred

ferred the Legiſlative Authority of raiſing Money from themſelves, by an ill-placed Confidence, into the Hands of a few; the Cortes of *Spain*, by truſting the Power of raiſing Money without their being aſſembled, though but for one Year; and the Eſtates of *France*, by allowing the Aids for the Defence of that Kingdom to be raiſed for three or four Years together, without their being ſummoned to meet, have never been able to retrieve their ancient Liberties and Conſtitution; but by the weak Compliance with ſuch a fatal Meaſure were the unhappy Inſtruments of rendering themſelves uſeleſs, and of enſlaving their reſpective Countries.

3dly, Becauſe though we have all poſſible Confidence in his Majeſty's Wiſdom and Juſtice, and all imaginable Zeal to the Honour and Support of his Perſon and Government, we cannot approve of a Meſſage which, we are perſuaded, was both formed and adviſed by the ſame Miniſters, in whom thoſe extenſive and diſcretionary Powers are lodged by this Addreſs; and we ſee no Reaſon, from any Experience of their paſt Oeconomy, to truſt them with the arbitrary Diſpoſal of an unlimited Sum, and as little Reaſon, from the Succeſs of their former Alliances, to give any Approbation to paſt Treaties, which have never been communicated to this Houſe, or a previous Sanction of any future Treaties they ſhall contract; eſpecially ſince, by the Multiplicity of Negotiations, they have involved the Nation in Engagements with divers foreign Powers, inconſiſtent (as we conceive) with one another, and in ſo great a Variety, we can by no Means be ſure that the beſt will be ſingled out to be fulfilled.

4thly, Becauſe the preſent unfortunate Situation of the Affairs of *Europe* cannot be repreſented as unforeſeen or unexpected, ſince from the gradual

Progress of our Negotiations for some Years last past, the gradual Increase of the Disorders and Confusion in *Europe* has constantly been foretold: We therefore conceive, that had there not been some secret Reason for proceeding in this Manner (which Reason we will rather pass over in Silence, than attempt to point out) the necessary Demands of Men and Money would have been laid before the Parliament at the Beginning of the Session, according to the ancient and regular Usage; and which would as certainly have been granted by a Parliament which has distinguished itself by a remarkable Zeal, Duty and Liberality to the Throne.

5thly, We cannot think it prudent, in order to extricate ourselves out of our present Difficulties, to lodge these unlimited and (as we apprehend) dangerous Powers in the Hands of those very Persons, under whose Management and Conduct these Difficulties have been brought upon us: If (as we conceive) the National Debts are hardly lessen'd by more than Twenty Years Peace; if our successive Fleets have proved a Terror to no Nation, and but only a Burthen to our own; if our great Armies have disturbed the Minds of none but his Majesty's own Subjects, this extensive Power of raising Money, Fleets and Armies seems to us improperly intrusted in the Hands of those Ministers who have made no better Use of the Confidence already reposed in them.

6thly, We would, with the utmost Zeal, concur in whatever might increase to his Majesty the Affections of his People at Home, or the Respect of his Neighbours Abroad; but this Zeal without Knowledge, we think, can tend to neither of those desirable Ends, but on the contrary, rather bring Contempt (as we apprehend) upon the too easy and implicit Faith of Parliaments, than add Weight and

Dignity

Dignity to those Powers we lodge, without any visible Reason, in the Hands of the Ministers.

Gower,	*Litchfield*,	*Bathurst*,
Chesterfield,	*Boyle*,	*Foley*,
Bristol,	*Graham*,	*Wa. and Nottingham*,
Tweedale,	*Stair*,	*Shaftesbury*,
Northampton,	*Clinton*,	*Berkshire*,
Cobham,	*Thanet*,	*Craven*,
Oxford and Mortimer,	*Aylesford*,	*Montrose*,
Bedford,	*Marchmont*,	*Strafford*,
Carteret,	*Ker*,	*Coventry*,
Montjoy,	*Cardigan*,	*Weymouth*.
Willoughby de Broke,		

Die Jovis 11° *Aprilis*, 1734.

Hodie 2ª *vice lecta est Billa*, entitled, An Act for enabling his Majesty to apply the Sum of One Million Two Hundred Thousand Pounds out of the Sinking Fund for the Service of the Year 1734, and for appropriating the Supplies granted in this Session of Parliament.

Proposed to commit this Bill, which being objected to,

And long Debate had thereon,

Contents 64, Proxies 30 } 94 — The Question was put, whether this Bill shall be committed?

Not cont. 32, Proxies 19 } 51 — It was resolv'd in the Affirmative

Dissentient

1*st*, Because the taking away, in this Manner, the whole Produce of the Sinking Fund has a Tendency, as we apprehend, to the Destruction of Parliamentary Credit and National Faith, and is more dangerous in its Consequences, as it is founded upon a Doctrine newly laid down, That the Proprietors of all the Debts, subscribed to the *South Sea* Company, have no Right to their principal Money, but only to an Annuity of Four *per Cent*.

and if this Opinion ſhould be thought to be countenanced by Parliament in paſſing this Bill, we are apprehenſive, that the Effects of it may be too ſoon and ſeverely felt, eſpecially ſince the ſaid Proprietors have found, by Experience, that they have been paid off when their Annuities or Stocks were above *Par*; and the Sinking Fund is now diverted, when, as we apprehend, the ſaid Stocks and Annuities are likely to fall conſiderably under *Par*.

2*dly*, Becauſe we look upon this Proceeding to be contrary to the Contract underſtood to have been made between the Publick and thoſe Creditors who conſented to the Reduction of their Intereſt, in Confidence that their Principal and remaining Intereſt would thereby be better ſecured: In Purſuance of which, an Act of Parliament was made in the third Year of his late Majeſty's Reign, whereby it is enacted, "That the Monies to ariſe from Time "to Time by certain Surpluſſes, Exceſſes, and "Overplus Monies, therein ſpecified (which are "commonly called the Sinking Fund) ſhall be ap-"propriated for diſcharging the Principal and In-"tereſt of ſuch National Debts and Incumbrances "as were incurred before the 25th Day of *De-"cember* 1716, and were declared to be National "Debts, and were provided for by Act of Par-"liament, in ſuch Manner and Form as ſhould "be directed or appointed by any future Act or "Acts of Parliament." And the ſaid Act of Parliament is confirmed by another Act made in the Sixth Year of his late Majeſty, which (after reciting that the ſaid Overplus-Money will be greatly increaſed, as it was from the 24th of *June* 1727) applies the ſaid Overplus-Monies as they ſtood appropriated by the former Act; and likewiſe eſtabliſhes a Contract between the Public, and every individual Creditor of the Publick that ſubſcribed to the *South Sea* Company, that the ſaid ſubſcribing

Cre-

Creditors shall have a perpetual Annuity of Four *per Cent.* from the Year 1727, until they should be paid off; and then applies the Sinking Fund, so increased, to pay such Debts as were contracted before the 25th of *December* 1716, and declared to be National Debts, and provided for by Act of Parliament; which, if it is pursued, will be the most effectual Means (as it is the strongest Stipulation that can be made) for paying off the National Debt: And these Appropriations in the said Acts were manifestly made to prevent the Application of the Sinking Fund to the current Service of the Year, or to the Payment of Debts incurred since the Year 1716; which, like the present Navy Debt, may have lain dormant as long as they could possibly be concealed, and been occasioned by Ministers who may have run the Nation into larger Expences every Year than they thought for their Interest to demand from Parliament; we apprehend the greater Danger from this Proceeding, by considering the Steps which have been taken before it came to this Point: At first some Surplusses were distinguished out of the Sinking Fund; and Supplies for the current Service of the Year raised upon them; then a Sum of Five Hundred Thousand Pounds, being Surplusses of the said Fund over the Million which had been annually paid off, was applied last Year in the same Manner: Now the Whole is taken at once, and we may justly suspect, that the next Attempt will be to mortgage the Sinking Fund, the Consequence of which will inevitably be, as we conceive, a total Destruction of Parliamentary Credit, and introduce a Necessity of taxing the Funds: The next Step is more easy to be foreseen than proper to be expressed.

3dly, Because the appropriating Clause in this Act is, in Effect, an Unappropriation of all the Money that has been raised this Year, and puts it

in the Power of a Minister to divert any of the Supplies to whatever Purposes he shall think fit; and this in Consequence only of an unprecedented Message from the Crown, specifying neither the Dangers apprehended nor the Services proposed; whereas appropriating Clauses were introduced to prevent the secret ill Use of Publick Money, and every Tendency of breaking through them is a just Foundation for Parliamentary Jealousy and Inquiry; and therefore we apprehend, that we cannot answer it to the Nation, if we should acquiesce when such Innovations are attempted.

4thly, Because this new Method of unappropriating Money raised for particular Uses frustrates and eludes the Wisdom and Caution of Parliaments, in the original Grant of those Monies, which is always in Consequence of Estimates laid before the other House, and for Services specified, and this too at the Beginning of the Session in a full House; whereas this unappropriating Clause comes in not only at the End of the Session, but at the End of the Parliament, in a thin House, after many Gentlemen were obliged to go to their respective Countries, and the House may be apprehended to have consisted chiefly of such who had either no Business in the Country, or had particular Reasons for not going there till this Clause should be first passed, and take Effect.

5thly, Because this Clause gives Ministers such a Latitude to embezzle or misapply the Publick Money, that we apprehend it to be of the most dangerous Consequence; for the Accounts (if any) given afterwards of the Disposal of such Sums, tho' impossible to be credited, may be impossible to be disproved; Domestick Fortunes may be raised out of Foreign Subsidies, and the Money asked for our Defence, and granted for our Safety, may be employed for our Destruction: The Vote of Credit

Credit in the Year 1726, and what was built upon it, cost the Nation One Million Seven Hundred Ninety-seven Thousand Seven Hundred and Thirty Pounds, exclusive of the great Increase of Forces by Sea and Land that were granted by Parliament; Four Hundred and Thirty-five Thousand Pounds were never accounted for to Parliament, and the rest was accounted for under the Articles of Money paid to the Landgrave of *Hesse*, amounting to One Million Seventy-nine Thousand Seven Hundred Pounds; to the Crown of *Sweden* One Hundred and Fifty Thousand Pounds; to the Duke of *Wolfenbuttle* One Hundred Thousand Pounds; to Exchange to the *Hessians* Ten Thousand Three Hundred Thirty-five Pounds; to Exchange to *Denmark* Twenty-two Thousand Six Hundred Ninety-four Pounds; and all this Expence was incurred to guard against Dangers, which the Administration then gave out they apprehended from the exorbitant Power of the House of *Austria*.

6thly, Because the Money raised this Year amounts to Three Millions Nine Hundred and Eighty Thousand Pounds; One Million is raised by that expensive Way of mortgaging the Salt for Eight Years; the Sinking Fund, amounting to Twelve Hundred Thousand Pounds, is taken, and every Thing done that can carry an Appearance of easing the Land this Election-Year: But this Bill not only gives the Ministers a Power over the whole Supply raised this Year, but, by this unprecedented Device, lays a certain Foundation of a greater Load upon the Land, which the Nation may be reduced to pay off with Interest next Year; and we cannot omit this Circumstance, that the Money voted this Year exceeds the Supply to the Amount of above One Hundred Thousand Pounds.

7thly, Because we conceive this Precedent to be the more dangerous at the End of a Parliament, and

and may be followed, fatally for our Liberties, at the Conclusion of future Parliaments; for we have little Reason to be sure, and as little to hope, that future Parliaments will be (like this) unbiass'd, uncorrupt, uninfluenced, by the great Number of Employments they enjoy; zealous Assertors of the Laws, Liberties, and Constitution of their Country: And should there ever hereafter unfortunately be chosen a *House of Commons*, consisting of a Set of Men corrupted by a Minister, bartering the Liberties of their Country in the most flagitious Manner, detested and despised by those they represent, they would probably, towards the End of their Term, compleat the Measure of their Iniquity, by lodging such a Power in the Hands of their corresponding Minister, as would enable him to chuse them again in the succeeding Parliament, contrary to the Intentions as well as Interests of their true Electors; by which Means, Corruption and Tyranny would be entail'd upon this Nation, in the most dangerous Manner, by the Sanction of Parliament.

8*thly*, Because blending inconsistent Matters of this Nature, as we conceive, in a Money-Bill, lays this House under the utmost Difficulties, since the Delays occasioned by any Alterations made in this House to some Parts of a Money-Bill, may be unavoidable Obstructions to other Parts of it that require Expedition and Dispatch.

9*thly*, Because the extending of this unprecedented Power to the 24th of *December* next, is a Length of Time beyond what was ever known, as we apprehend, in any Case; and is, in our Opinion, not only dangerous, but unnecessary; for the chief Pretence for the Vote was, to have Power during the Interval of Parliament, which may be chosen and meet much sooner, if it shall be thought conve-

convenient, after so extensive a Power is lodg'd in the Hands of the Ministers for so long a Term.

Denbigh,	*Craven*,	*Marlborough*,
Litchfield,	*Bathurst*,	*Carteret*,
Coventry,	*Weymouth*,	*Oxford and Mortimer*,
Northampton,	*Montrose*,	*Tweedale*,
Wa. and Nottingham,	*Stair*,	*Gower*,
Clinton,	*Strafford*,	*Ker*,
Montjoy,	*Thanet*,	*Masham*.

Die Veneris 28° *Februarii*, 1734.

The Orders of the Day being read, for the House to proceed further in the Consideration of the Petition of *James* Duke of *Hamilton* and *Brandon*, *Charles* Duke of *Queensberry* and *Dover*, *James* Duke of *Montrose*, *Thomas* Earl of *Dundonald*, *Alexander* Earl of *Marchmont*, and *John* Earl of *Stair*, in Relation to the Matter of the Election of the Sixteen Peers for *Scotland*; and also to take into Consideration the Answer of the said Petitioners to the Order of this House of the 21st of this Instant *February*, deliver'd in Yesterday.

The said Answer was read;

And it being mov'd to resolve, That the Petitioners, by their Answer, have not comply'd with the Order of this House of the 21st of this Instant *February*, whereby they were ordered to lay before this House in Writing the particular Instances of the undue Methods and illegal Practices complain'd of in their Petition, upon which they intend to proceed, with the Names of the Persons by whom such undue Methods and illegal Practices were used,

Contents 90 Not Cont. 47 — After Debate the Question was put thereupon?

And it was resolved in the Affirmative.

Dissentient

Dissentient.

1st, Because it was agreed in the Debate, conformable to the Rules of Reason, that no Impossibility was required from the Lord's Petitioners; and tho' we allow that they have not literally complied with the Order, yet, we think, the Assertion in their Answer, "That it is impossible for them to "inform the House who were the Persons that in "the Course of the Examination, and from the Tes"timony of future Witnesses, may appear to have "been concerned," was sufficient to satisfy the House, that they have not wilfully disobeyed the Order.

And from the Nature of Things, we conceive it impracticable for the Lords Petitioners to name all the Persons who may be concerned in these illegal Proceedings; for altho' the Offers of Places, Pensions and other Gratuities must be presumed to come from Persons in Power, yet such Offers may be reasonably supposed to be conveyed by Under-Agents; and we must also observe, that if those under-hand Agents should be publickly named before Examination, they may either be prevailed upon to abscond, or to take the Whole upon themselves, to screen Offenders of a higher Rank.

We must further declare it as our Opinion, that such corrupt and dark Designs, as are specified in the Answer, may have been carried on with that Secrecy and Dexterity, that altho' a moral Certainty may appear of their having been executed, the Persons concerned in the Execution may never be discovered; yet this good Effect might have arisen from the Inquiry, that the Legislature would have found Means to prevent such pernicious Practices for the future: And even in that Case, the Lords Petitioners, by bringing this Affair before the House, would have done a real Service to the Peerage of *Scotland*, to this high Court of Judicature, and to the whole united Kingdom.

Somerset,

Somerset, *Tadcaster*, *Maynard*.

2*dly*, Because we can no ways conceive, that the going on upon this Examination, without having the Names of the Persons produced, could be attended with any possible Injustice to, or Hardship upon those who might afterwards be named by the Evidence: On the contrary, we are persuaded, that such Persons would have an Advantage which could not happen in any other Course of Proceeding, the whole Matter of the Accusation would lie open to them, the Witnesses against them would be known, who could not afterwards be suffered to vary from their Testimony, and the House would in Justice allow such Persons a full Time to answer the Accusation, and to bring up Witnesses, if necessary, to prove their Innocence: Neither is this to be looked upon as an Accusation at present; for, as it was justly observed, there are no Accusers, nor Persons accused: But we apprehend it to be the most proper Subject for a parliamentary Enquiry that can pobly be brought before this House.

3*dly*, However it may be necessary in the Course of other Proceedings, whether upon Impeachments or Appeals brought before this House, that all the Persons concerned should be named, we can by no Means think it necessary upon an Enquiry, no final Sentence being then to be given; and those Rules which are consistent with Justice in the former Cases must, in our Opinion, tend to obstruct all Justice in the latter: We cannot conceive that an innocent Person, who should happen to be named in the Course of such Examination, can possibly be deprived of the Means of making his Innocence appear; but we can well foresee, that guilty Persons, and those probably of the highest Rank, may escape by such a Method, which imposing an Impossibility on the Informants, must, as we apprehend, tend to defeat all parliamentary Enquiries;

and

and therefore could not be, in our Opinion, within the Intention of the Order.

4thly, Becauſe the Matters ſpecified in the Anſwer are of ſuch a Nature as ſeem only proper to be examined in this Houſe; and had the Lords Petitioners ſought a Remedy any where elſe, they might have been juſtly cenſured: We apprehend therefore, that the pinning them down to the preciſe Words of the Order may be attended with this fatal Conſequence, that all parliamentary Enquiries may be render'd much more difficult hereafter; which may probably give ſuch Encouragement to corrupt Miniſters, that they may be prompted to make the moſt dangerous Attempts upon the Conſtitution, and hope to come off with Impunity: Such Apprehenſions naturally ſuggeſt the melancholy Reflections, that our Poſterity may ſee the Time, when ſome of thoſe Lords, who ſit upon a more precarious Foot than the reſt of the Houſe, having, thro' due Motives of Virtue and Honour, oppoſed the Deſigns of ſome future Miniſter, for that, and for that alone, may be excluded at an enſuing Election; and the whole World may be ſenſible of the Cauſe of their Excluſion, no Remedy may be found, but their Caſe may become a Subject of National Concern, Indignation and Reſentment.

Scarſdale,	*Strafford*,	*Litchfield*,
Cheſterfield,	*Bruce*,	*Abingdon*,
Boyle,	*Denbigh*,	*Beaufort*,
Huntingdon,	*Bolton*,	*Craven*,
Warrington,	*Thanet*,	*Cobham*,
Maſham,	*Bedford*,	*Shafteſbury*,
Bridgewater,	*Northampton*,	*Coventry*,
Graham,	*Haverſham*,	*Aylesford*,
Macclesfield,	*Berkſhire*,	*Gower*,
Foley,	*Angleſey*,	*Bathurſt*.
Suffolk,		

Then

Then it was moved to Order, that the said Petition be dismissed.

Contents 85 } 99 And after further Debate, the
Proxies 14 } Question being put upon the said
Not Cont. 49 } Motion?
Proxies 3 } 52 It was resolv'd in the Affirmative,
And order'd accordingly.

Dissentient

1*st*, Because that tho' the Lords Petitioners have not literally complied with the Order, according to the Sense of the House, yet they have laid before us Facts that are of so criminal a Nature in themselves, and so dangerous in their Consequence to the Nation in general, and to this House in particular, that we think a due Regard to the Safety of the one, and the Honour of the other, require the strictest Examination.

Somerset, *Tadcaster*, *Maynard*.

2*dly*, For when we consider the first Instance mentioned in the Answer of the Lords Petitioners, *viz.* "That the List of Sixteen Peers for *Scotland* "had been framed by Persons in high Trust under "the Crown, long previous to the Election itself, "and that this List was shewn to Peers, as a List "approv'd of by the Crown, and was called the "King's List," we are fill'd with Indignation to see that great Name indecently blended with the Names of Ministers, and profaned and prostituted to the worst Purposes; Purposes that must necessarily tend to the Subversion of our Constitution, which, we know, it is his Majesty's Glory and Desire to preserve: Such a criminal Attempt to screen or facilitate a ministerial Nomination, by the Interposition, equally false and illegal, of his Majesty's Name, calls, in our Opinion, for the strictest Enquiry, and the severest Punishment upon the Authors of the Fact, if it be prov'd, or the Assertors of it, if it be not: But is, in our Opinion, no way

to

to be dropt unexamin'd and unenquir'd into: Such a Precedent may, in future Times, encourage the worst of Ministers to load, with his Guilt, the best of Princes; the borrowed Name of his Sovereign may at once become his Weapon and his Shield, and the Constitution owe its Danger, and he his Defence, to the Abuse of his Prince's Name, after a long Abuse of his Power.

3dly, Because the following Instances, *viz.*
" That Endeavours were used to engage Peers to
" vote for this List, by Promise of Pensions and
" Offices Civil and Military to themselves and near
" Relations, and by actual Promise of Sums of
" Money.

" That Sums of Money were actually given to
" or for the Use of some Peers to engage them to
" concur in voting this List.

" That annual Pensions were promised to be
" paid to Peers, if they concurred in the voting
" this List, some of them to be on a regular Esta-
" blishment, and others to be paid without any
" Establishment at all.

" That about the Time of this Election, Num-
" bers of Pensions, Offices, of which several were
" nominal, and Releases of Debts owing to the
" Crown were granted to Peers who concurred in
" voting this List, and to their near Relations," seem in the highest Degree to affect the Honour and Dignity of this House: Since untainted Streams can hardly be expected to flow from a corrupted Source: And if the Election of Sixteen Peers to represent the Peerage of *Scotland* should ever, by the foul Arts of Corruption, dwindle into ministerial Nomination instead of Persons of the first Rank, greatest Merit, and most considerable Property, we may expect, in future Parliaments, to see such only returned, who, owing their Election to the Nomination of the Minister, may purchase the

the Continuance of their precarious Seats by a fatal and unanimous Submission to his Dictates: Such Persons can never be impartial Judges of his Conduct, should it ever be brought in Judgment before this great Tribunal.

4*thly*, Because the last Instance mentioned, *viz.* "That on the Day of Election, a Battalion of his "Majesty's Forces was drawn up in *the Abby-Court* "at *Edinburgh*, and three Companies of them were "marched from *Leith*, a Place at one Mile's Dis-"tance, to join the rest of the Battalion, and kept "under Arms from Nine in the Morning till Nine "at Night when the Election was ended, contrary "to Custom at Elections, and without any Cause "or Occasion, that your Petitioners could foresee, "other than the over-awing of the Election," we apprehend to be of the highest Consequence both to our Liberties in general, and the Freedom of Elections in particular; since whatever may have been the Pretence, whatever Apprehensions of Disorders or Tumults may have been alledged in this Case, may be equally alledged on future Occasions, especially as we have a Number of regular Forces, abundantly sufficient to answer such Calls; and we apprehend, that the Employment assigned to this Battalion will give great Distrust and Uneasiness to many of his Majesty's Subjects, who will fear what Use may be made of the rest of that very great Number of Men now kept up in this Nation.

5*thly*, Because we conceive, that such a Treatment given to a Petition that contained an Information of Matters of so great Importance, and sign'd by Peers of such great Rank, Honour and Veracity, must in future Times discourage all Informations of the like Nature.

6*thly*, Though all Lords declared their Desire of examining to the Bottom of these important Facts, and though we should acknowledge ourselves to be

persuaded that it was their real Intention, yet we much doubt, whether the World will judge with the same Candour, and not rather impute this Dismission of the Petition to an Unwillingness in this House to enquire into Facts that are in their Nature so injurious to the Crown, so destructive of the Honour of Parliament, and so dangerous to the whole Frame of our happy Constitution.

Graham,	*Bedford*,	*Berkshire*,
Strafford,	*Scarsdale*,	*Shaftesbury*,
Foley,	*Chesterfield*,	*Bathurst*,
Cobham,	*Litchfield*,	*Bridgewater*,
Beaufort,	*Masham*,	*Bruce*,
Abingdon,	*Boyle*,	*Huntingdon*,
Warrington,	*Denbigh*,	*Craven*,
Bolton,	*Thanet*,	*Coventry*,
Northampton,	*Macclesfield*,	*Anglesey*,
Aylesford,	*Gower*,	*Haversham*.
Suffolk,		

After which, a printed Paper, entitled, *The Protests of the most Noble and Right Honourable the Peers of* Scotland, *made in the Borough-Room at* Edinburgh, *June the 4th*, 1734, as containing Reflections upon the Government and the Peerage, was offered to the House.

As was also a written Copy of the said Protests, attested by Witnesses who were ready to prove it to be an authentick Copy.

And it being desired, that the same may be read,

It was moved to adjourn.

Contents 73
Not Cont. 39

After Debate, the Question was put, whether the House shall be now adjourned to *Monday* next at Eleven of the Clock?

It was resolv'd in the Affirmative.

Dissentient'

Because we can by no Means think it consistent with the Honour of the House to adjourn without ap-

appointing a Day, as was propoſed, to conſider of a Matter allow'd univerſally to be of the higheſt Importance; and we have Reaſon to apprehend that Poſterity, upon the Peruſal of the Journal of this Day, may be induced to think, that this Houſe was not inclined to permit the Tranſactions of the late Election in *Scotland* to be brought under Examination in any Shape whatſoever; the Method propoſed being, as we conceive, clear of all Objections which were made in Relation to the Petition.

Graham,	*Berkſhire*,	*Scarſdale*,
Haverſham,	*Foley*,	*Shafteſbury*,
Bedford,	*Bridgewater*,	*Coventry*,
Strafford,	*Aylesford*,	*Abingdon*,
Warrington,	*Cheſterfield*,	*Cobham*,
Litchfield,	*Denbigh*,	*Maſham*,
Beaufort,	*Bruce*,	*Bolton*,
Bathurſt,	*Boyle*,	*Thanet*,
Huntingdon,	*Northampton*,	*Macclesfield*,
Craven,	*Angleſey*,	*Gower*.
Maynard,	*Suffolk*,	

Die Mercurii 17o *Aprilis*, 1735.

The Lord *Delawarr*, according to Order, reported from the Committee of the whole Houſe, to whom the Bill, entitled, *An Act for regulating the Quartering of Soldiers during the Time of the Elections of Members to ſerve in Parliament*, was committed, the Amendments made by the Committee to the ſaid Bill; and the ſame were read by the Clerk.

And the firſt Amendment being read a ſecond Time, which was, to leave out the latter Part of the Preamble, and to ſubſtitute Words inſtead thereof reciting, [That it hath been the Uſage and Practice to cauſe any Number of Soldiers, quartered in any Place appointed for electing of Mem-

bers to serve in Parliament, to remove out of the same during the Time of Election.]

Which being objected to,

Contents 61
Not Cont. 33

After Debate, the Question was put, whether to agree with the Committee in the said Amendment?

It was resolved in the Affirmative.

Dissentient

1*st*, Because we conceive these Words, "To "the End therefore that the same may be safely "transmitted to Posterity, and for the avoiding "any Inconveniences that may arise thereunto from "any Regiment, Troop or Company, or any Num-"ber of Soldiers which shall be quartered or bil-"leted within any City, Borough, Town, or Place, "where any Election of any Member or Members "to serve in Parliament, or of the Sixteen Peers "to represent the Peerage of *Scotland* in Parlia-"ment; or of any of them, shall be appointed to "be made;" extremely proper, in a Bill calculated to preserve to us and our Posterity the Enjoyment of our Liberties, by securing the Freedom of Elections: Besides that, in our Opinion, it seems very extraordinary to leave out Words that singly intimate our Desire of transmitting to our Posterity the Liberties we enjoy ourselves.

2*dly*, Because we cannot conceive, that there was any Weight in the Argument urged for omitting those Words, *viz.* [That they carried an Imputation that some Facts had been committed contrary to the Freedom of Elections] which this Bill was to prevent for the future; whereas, in our Opinion, it is so much the contrary, that, we think, the leaving out those Words, the natural Import of which carry no Imputation at all, may possibly be construed as a Consciousness of some irregular Use made of Troops at Elections, which, it might be

be apprehended, these Words might point out, especially since Reports of that Nature have of late been spread, whether well grounded or not we do not take upon ourselves to determine.

Denbigh,	*Coventry*,	*Ker*,
Chesterfield,	*Clinton*,	*Bridgewater*,
Litchfield,	*Berkshire*,	*Anglesey*,
Bolton,	*Craven*,	*Gower*,
Thanet,	*Huntingdon*,	*Foley*,
Carteret,	*Cobham*,	*Beaufort*,
Winchelsea and Nottingham,	*Bathurst*,	*Haversham*,
R. Lincoln,	*Shaftesbury*,	*Boyle*.
	Montjoy,	

Then another Amendment was read a second Time, being to leave out the second enacting Clause, which was to inflict Penalties and Punishments on Officers and Soldiers who should refuse or neglect to remove out of Places at the Time of Elections, and to substitute Words inflicting Punishments on the Secretary at War, in Case he neglects to issue Orders for such Removal.

And it being proposed to agree with the Committee in that Amendment,

Contents 64 After Debate, the Question was
Not Cont. 33 put thereupon? And

It was resolved in the Affirmative.

Dissentient

1*st*, Because we conceive, that the leaving out this Clause is, in Reality, defeating the Effect and Intention of the whole Bill; a Bill thought so necessary by the whole House, that the learned Judges were unanimously ordered to prepare and bring it in, in Lieu of a Clause, to the same Purpose, offer'd to be inserted in the annual Act to prevent Mutiny and Desertion.

2*dly*, Because we think it much more necessary, that Officers and Soldiers should be subject to be tried by the Civil Power for an Offence of this high

Nature against the Constitution in general, than for quartering a Man contrary to the Method prescribed by the Act to prevent Mutiny and Desertion, for which Crime they are at present liable to be tried and cashier'd by the Civil Magistrate.

3dly, Because we conceive, that this Offence, being an Offence of the highest Nature against the Civil Government, is properly cognizable by the Civil Magistrate only, and most improperly referred to the Determination of a Court-Martial: Offences against Military Discipline are justly reserved for the Decision of a Court-Martial, as consisting of Persons of the same Profession, and consequently the propereſt Judges; and by a Parity of Reasoning, we conceive, the Civil Magistrate is the fittest Judge of Civil Offences: We cannot therefore but fear, that a Court-Martial may consist of Persons who may be at least ignorant, and possibly hasty and partial Judges of the Merits of an Election.

4thly, Because the Intention of this Bill being to prevent any Insults from Troops during the Time of Elections, we should provide against all possible Dangers; and though, during his Majesty's Reign, we apprehend no ill Use will be made of the Troops, yet, in future Times, Ministers may prevail, whose unpopular and detested Administration may leave them no Hopes of Security from a free elected Parliament, and reduce them to violent and illegal Methods of employing those Troops, kept up by the Corruption of one Parliament, in the forcible Election, or rather the Nomination of another: In which Case no Remedy can be hoped for against Officers so offending, since, as the Act now stands, they can only be tried by a Court-Martial, and a Court-Martial can only be appointed by the Crown; and consequently the same wicked Minister, who may hereafter advise such an Attempt upon our Constitution, will not be likely to permit his

his guilty Agents to suffer, but the Merits of their Crimes will carry Impunity along with it.

5thly, Because we cannot conceive, that the Arguments drawn from the Possibility of a Riot at an Election, or of a Rebellion or Invasion during the Time of Elections, wherein the Assistance of the Military Power may be necessary, were in any Degree sufficient to induce the House to leave out this Clause; since in the Case of a Riot, the Civil Magistrate is already armed with a rigorous Penal Law, known by the Name of the Riot-Act; and in the Case of a Rebellion or Invasion, it is well known that this and all other Laws would be silent; But, on the other Hand, we apprehend, great Inconveniencies may arise, if Troops have Liberty to march into Towns, during the Time of Elections, at the Requisition of a partial or corrupted Civil Magistrate, who may call a Majority he dislikes a Tumult, and supply with Force the Want of Interest of an unknown and unqualified Candidate; by which Means the Voice of the People may be drowned in the Noise of Arms.

6thly, Because we apprehend, that a very injurious and dangerous Construction may, by malicious People (too speciously) be put upon the leaving out of this Clause, [That altho' the Unpopularity of rejecting the Bill itself could not be withstood, yet the eluding and enervating the Efficacy of it had been indirectly brought about.] Which Supposition, however groundless, may give great Uneasiness and Apprehensions to many of his Majesty's good Subjects, and bring very great Unpopularity upon the Administration: an Evil, by all possible Means to be prevented, since Hate begets Hate; and an Administration once become unpopular soon becomes desperate, and may endeavour to strengthen their crazy and rotten Foun-

dation, by tearing away, for their own Use, the Corner-Stones of the Liberties of the People.

Winchelsea and Nottingham,	*Montjoy,*	*Craven,*
Berkshire,	*Boyle,*	*Ker,*
Chesterfield,	*Huntingdon,*	*Litchfield,*
Cobham,	*Clinton,*	*Coventry,*
Bridgewater,	*Bolton,*	*Bathurst,*
R. Lincoln,	*Thanet,*	*Shaftesbury,*
Beaufort,	*Carteret,*	*Haversham.*

We dissent for all the abovementioned Reasons, except the third.

Anglesey, *Gower,* *Foley.*

Die Veneris 9o Maii, 1735.

Hodie 2a vice lecta est Billa, entitled, An Act for explaining and amending an Act passed in the Parliament of *Scotland* in the Year 1701, entitled, *An Act for preventing wrong Imprisonment, and against undue Delays in Trials.*

Proposed to commit the Bill.

Not Cont. 68
Contents 28

After Debate, the Question was put, whether this Bill shall be committed?

It was resolved in the Negative.

Dissentient

1st, Because we apprehend, a Bill of this Nature sent up from *the House of Commons* ought, at least, to have undergone the Form of a Commitment, since whatever was unnecessary or wrong in it might there have been left out or amended; but several Matters contained in the Bill seem to us highly expedient to be passed into a Law; for by the Law of *Scotland,* as it now stands, any Judge may, by a summary Warrant, commit Persons upon Information signed, without any Oath made, and without convening the Parties before him, or hearing

ing what they can alledge in their own Justification, and send them to a remote Prison in any Corner of the Kingdom; no express Words in any Statute do at present forbid such a Practice: And we have great Reason to believe, that some Abuse of this unlimited Power did appear before *the House of Commons*, which might probably give the first Rise to the Bill.

2dly, Because, as the *Habeas Corpus* Act is the great Security of the Liberties of this Part of the United Kingdom, it would be, in our Opinion, both unsafe and ungenerous not to extend the same Liberty to the other; for should they, who have hitherto been brave Assertors of their Liberties, find themselves exposed to Oppressions from which the rest of their Fellow-Subjects are secured by Law, Necessity may prompt them to attempt by Violence to free themselves, or Revenge provoke them to become the Instruments of Power, and bring us under the same Dependence; and the History of late Times sufficiently convinces us, that in those Reigns, when arbitrary Power was designed and attempted in this Kingdom, desperate and adventurous Agents were sent first to try the Experiment in *Scotland*.

3dly, Because there was no Provision in the Bill to prevent an Abuse of seizing Persons on Pretence of Debt, and detaining them till the Elections were over, where they had a Right to vote. The Protection granted by the Bill was no more than what every common Court of Justice actually allows to any Evidence whose Presence may be necessary in Matters of much less Consequence; and we cannot help testifying our Surprize, that this Regulation has not already been made over the whole United Kingdom; we hope, however, another Session will not pass without taking effectual Care to prevent such a dangerous Abuse of Law.

4thly, Be-

4*thly*, Becauſe Experience has ſhewn us the Benefits which aroſe by delivering the Subjects of that Part of the Kingdom from their Vaſſalage, and freeing them from a ſervile Dependence on their Superiors; and as (we conceive) the Purport of this Bill was nothing more than a natural Extenſion of the ſame Meaſure, it would have been the moſt probable, if not the only Method to eradicate any remaining Diſaffection, tho' we have no Ground to ſuppoſe, from any late Tranſactions, that there is any ſuch; on the contrary, thoſe who were thought the moſt diſaffected have lately appeared ſufficiently tractable; but what Diſſatisfaction the rejecting ſuch a Bill may create, even amongſt the beſt Subjects, and thoſe who have always been moſt attached to the preſent Eſtabliſhment, we cannot reflect upon without Concern; for as the Union was made in Support of the preſent Eſtabliſhment, which is founded upon the Revolution, and the Revolution upon Principles of Liberty, they who have always aſſerted thoſe Principles may (as we apprehend) juſtly complain, that the Liberty of the Subject is not equally ſecured in every Part of the United Kingdom.

5*thly*, Becauſe, we are apprehenſive, it will appear very extraordinary to the World, That a Bill for the Security of the Liberty of the Subject ſhould have been thrown out of this Houſe without a Commitment, when ſo many Bills have paſſed for laying on, or continuing ſevere and heavy Duties upon them: Remote Apprehenſions, barely poſſible, and Suſpicions of Diſaffection, have been Arguments formerly made Uſe of on the Side of the Crown, for enacting the ſevereſt Penal Laws upon the Subject; and we conceive it ſtill more incumbent on the Legiſlature to be watchful over the Liberties of the People committed to their Care, ſince it is much eaſier to reſtrain Liberty from run-

ning

ning into Licentiousness, than Power from swelling into Tyranny and Oppression.

6thly, Because Liberty being the common Birthright of all Mankind, and still preserved to this Nation by the Wisdom and Courage of our Ancestors, we think an Infringement of that Right, tho' but for an Hour, by wrongful Imprisonment, is not only an Injury to the Person immediately concerned, but a notorious Invasion of the Constitution: We should not deserve those Liberties ourselves, if we did not take the most effectual Methods to transmit them in their full Extent to latest Posterity, and to restrain by proper Laws any flagitious Attempts of Ministers, prompted by Ambition or drove by Despair, who may at any Time hereafter endeavour to undermine or attack them: Humanity and Generosity particularly call upon us, who are distinguished by many Privileges and Advantages peculiar to ourselves, to secure to the People that Liberty which they have an equal Right to with us; a Blessing the meanest Subject of this Kingdom ought ever to enjoy in common with the greatest.

Chesterfield,	*Berkshire,*	*Foley,*
Oxford and Mortimer,	*Cobham,*	*Coventry,*
Montjoy,	*Strafford,*	*Thanet,*
Winchelsea and Nottingham,	*Bathurst,*	*Gower,*
	Litchfield,	*Haversham,*
Northampton,	*Boyle,*	*Suffolk.*

Die Mercurii 19° *Maii*, 1736.

Hodie 3ª *vice lecta est Billa*, entitled, An Act for indemnifying Persons who have been guilty of Offences against the Laws made for securing the Revenues of Customs and Excise, and for enforcing those Laws for the future.

And,

And, after a long Debate on the Merits of the Bill, it was proposed to add a Clause by way of Rider, in the Words following, *viz.*

"Provided always, That nothing in this Act "contained shall extend, or be construed to ex- "tend, to restrain his Majesty's Court of *King's-* "*Bench*, or any of the Judges thereof, or the "Court of Justiciary in *Scotland*, respectively, from "bailing any Person committed for Felony by Vir- "tue of this Act, in such Manner as they may by "Law do in other Cases of Felony."

Which Proviso was read thrice by the Clerk, and agreed by the House to be made Part of the Bill.

Contents 36 } 54
Proxies 18 }

Not Cont. 32 } 46
Proxies 14 }

The Question was put, whether this Bill, with the Amendment, shall pass? It was resolv'd in the Affirmative.

Dissentient'

1st, Because some Parts of this Bill are so repugnant to the Laws and Constitution of this Kingdom, as we apprehend, that we could not, consistently with the Rules of Reason and Justice, concur in the passing of it, the Substance of one Clause in this Bill being to this Effect, *viz.* "That "upon Information before a Justice of Peace, that "any Persons, to the Number of Three or more, "who are, or have been, after the 24th Day of "*June*, 1736, armed with Fire-Arms, or other "offensive Weapons, with Intent to run Goods, "such Justice shall, and may, grant a Warrant to "a Constable to apprehend such Persons; and if "such Justice finds Cause, upon Examination, he "shall, and may, commit them to the next County- "Jail, there to remain, without Bail or Mainprize, "until discharged by due Course of Law; or, upon "Conviction, they are to be adjudged guilty of "Felony." Now as this Bill is to create a new

Kind

Kind of Felony, without Limitation of Time or Place, upon Principles unknown to our Law, we cannot but think it ſhould be made ſo plain and clear, that the Judges in *Weſtminſter-Hall* might determine upon it without Doubts or Difficulties; but we conceive, as this Bill ſtands, many Doubts may ariſe as to the Conſtruction of it.

2*dly*, Becauſe we do not know of any one Act in the *Statute-Book*, whereby it is put in the Power of a ſingle Juſtice of the Peace to commit Perſons without Bail or Mainprize, upon a bare Information of an Intention, without any Proof: And altho' the Houſe found it neceſſary to repeal ſo much of the Clauſe aforeſaid as allows the Juſtices to commit without Bail or Mainprize, by adding a Rider to empower the Court of *King's-Bench* to grant Bail to Perſons ſo committed, we cannot be of Opinion, that the Objections to the Bill were removed, ſince the Power of Impriſonment ſtill remains in the Hands of a ſingle Juſtice of the Peace, upon a bare Information of an Intention to run Goods, without any other Overt Act to prove that Intention than what may be a common and innocent Circumſtance, *viz.* The riding Three or more in Company with uſual Arms, and no Limitation fixed either for Time or Place.

3*dly*, Becauſe this Bill was altered in the Committee by the unanimous Conſent of all the Lords preſent, and thoſe Alterations were diſagreed to upon the Report, without ſufficient Ground, as we conceive; and as Two noble and learned Lords, who preſide in the Two greateſt Courts of the Kingdom, ſhewed, by the ſtrongeſt Arguments, that the Bill, as it now ſtands, may be dangerous to the Liberties of our Fellow-Subjects, we could not agree to the paſſing of it, however expedient or neceſſary it may be ſuppoſed in other Reſpects; being fully perſuaded it would have been better to

have

have left this Matter to the Laws now in Being (already very severe) and to the Consideration of a future Session of Parliament, than to constitute a Precedent of such dangerous Consequence, and to enact a Law which, as we fear, may be attended with perpetual Grievances, Injustice, and Oppression.

Shaftesbury,	*Winchelsea and*	*Cobham*,
Oxford and	*Nottingham*,	*Foley*,
Mortimer,	*Thanet*,	*Strafford*,
Weymouth,	*Warrington*,	*Beaufort*,
Litchfield,	*Montjoy*,	*Coventry*,
Bolton,	*Bathurst*,	*Northampton*.

Die Veneris 25° *Februarii*, 1736.

The House being moved, That an humble Address be presented to his Majesty, to express the just Sense of this House of his great Goodness and tender Regard for the lasting Welfare and Happiness of his People in the Marriage of his Royal Highness the Prince of *Wales*; and as this House cannot omit any Opportunity of shewing their Zeal and Regard for his Majesty's Honour and the Prosperity of his Family, humbly to beseech his Majesty, that in Consideration of the high Rank and Dignity of their Royal Highnesses the Prince and Princess of *Wales*, and their many eminent Virtues and Merits, he would be graciously pleased to settle One Hundred Thousand Pounds a Year on the Prince of *Wales*, out of the Revenues chearfully granted to his Majesty (for the Expences of his Civil Government, and better supporting the Dignity of the Crown, and for enabling his Majesty to make an honourable Provision for his Royal Family) in the like Manner his Majesty enjoyed it before his happy Accession to the Throne; and also humbly to beseech his Majesty to settle the like Jointure on her Royal Highness the Princess of *Wales*,

Wales, as her Majesty had when she was Princess of *Wales*; and to assure his Majesty, that this House will be ready to do every Thing on their Part to perform the same, as nothing will more conduce to the strengthening of his Majesty's Government than honourably supporting the Dignity of their Royal Highnesses, from whom we hope to see a numerous Issue, to deliver down the Blessings of his Majesty's Reign to latest Posterity.

The Duke of *Newcastle* signified to the House, That he was commanded by his Majesty to acquaint their Lordships, that his Majesty did, on *Monday* last, send a Message to his Royal Highness the Prince of *Wales*, by the Lord Chancellor, Lord President, Lord Steward, Lord Chamberlain, Duke of *Richmond*, Duke of *Argyll*, Earl of *Pembroke*, Earl of *Scarborough*, Lord *Harrington*, and himself; which Message so sent by the Lords, being in Writing, was read as follows, *viz.*

(His Majesty has commanded us to acquaint your Royal Highness, in his Name, That upon your Royal Highness's Marriage, he immediately took into his Royal Consideration the Settling a proper Jointure upon the Princess of *Wales*, but his sudden going Abroad, and his late Indisposition since his Return, had hitherto retarded the Execution of these his gracious Intentions: From which short Delay his Majesty did not apprehend any Inconveniencies could arise, especially since no Application had, in any Manner, been made to him, upon this Subject, by your Royal Highness; and that his Majesty hath now given Orders for settling a Jointure upon the Princess of *Wales*, as far as he is enabled by Law, suitable to her high Rank and Dignity; which he will, in proper Time, lay before his Parliament, in order to be rendered certain and effectual for the Benefit of her Royal Highness.

The

The King has further commanded us to acquaint your Royal Highness, That altho' your Royal Highness has not thought fit, by any Application to his Majesty, to desire that your Allowance of Fifty Thousand Pounds *per Annum*, which is now paid you by Monthly Payments, at the Choice of your Royal Highness, preferably to Quarterly Payments, might, by his Majesty's further Grace and Favour, be render'd less precarious; his Majesty, to prevent the bad Consequences which he apprehends may follow from the undutiful Measures which his Majesty is informed your Royal Highness has been advised to pursue, will grant to your Royal Highness, for his Majesty's Life, the said Fifty Thousand Pounds *per Annum*, to be issuing out of his Majesty's Civil-List Revenues, over and above your Royal Highness's Revenues arising from the Dutchy of *Cornwal*, which his Majesty thinks a very competent Allowance, considering his numerous Issue, and the great Expences which do and must necessarily attend an honourable Provision for his whole Royal Family.)

And that to this Message his Royal Highness the Prince returned a verbal Answer, which, according to the best Recollection and Remembrance of the Lords, was in Substance as follows, *viz.*

(That his Royal Highness desired the Lords to lay him, with all Humility, at his Majesty's Feet, and to assure his Majesty, that he had, and ever should retain the utmost Duty for his Royal Person: That his Royal Highness was very thankful for any Instance of his Majesty's Goodness to him or the Princess, and particularly for his Majesty's gracious Intention of settling a Jointure upon her Royal Highness; but that as to the Message, the Affair was now out of his Hands, and therefore he could give no Answer to it.

After

After which his Royal Highness used many dutiful Expressions towards his Majesty, and then added, "Indeed, my Lords, it is in other Hands; "I am sorry for it;" or to that Effect.

His Royal Highness concluded with earnestly desiring the Lords to represent his Answer to his Majesty in the most respectful and dutiful Manner.

Which Message and Answer being read by the Lord Chancellor,

After long Debate upon the foregoing Motion,

Contents	28	40	The Question was put, whether such an Address shall be presented to his Majesty?
Proxies	12		
Not Cont.	79	103	It was resolv'd in the Negative.
Proxies	24		

Dissentient

1st, Because that this House has an undoubted Right to offer, in an humble Address to his Majesty, their Sense upon all Subjects in which this House shall conceive that the Honour and Interest of the Nation are concerned.

2dly, Because the Honour and Interest of the Nation, Crown and Royal Family can be concerned in nothing more, than in having a due and independent Provision made for the first-born Son and Heir apparent of the Crown.

3dly, Because in the late King's Reign One Hundred Thousand Pounds a Year, clear of all Deductions whatsoever, was settled upon his present Majesty, when Prince of *Wales*, out of a Civil-List not exceeding Seven Hundred Thousand Pounds a Year.

4thly, Because his present Majesty has granted to him, by Parliament, several Funds to compose a Civil-List of Eight Hundred Thousand Pounds a Year, which, we have very good Reason to believe, bring in at least Nine Hundred Thousand Pounds, and are more likely to increase than to diminish.

5thly, Becauſe out of this extraordinary and growing Civil-Liſt, we humbly conceive, his Majeſty may be able to make an honourable Proviſion for the reſt of his Royal Family, without any Neceſſity of leſſening that Revenue which, in his own Caſe when he was Prince of *Wales*, the Wiſdom of Parliament adjudged to be a proper Maintenance for the firſt-born Son and Heir apparent of the Crown.

6thly, Becauſe it is the undoubted Right of Parliament to explain the Intention of their own Acts, and to offer their Advice in purſuance thereof; and tho', in the inferior Courts of *Weſtminſter-Hall* the Judges can only conſider an Act of Parliament according to the Letter and expreſs Words of the Act, the Parliament itſelf may proceed in a higher Way, by declaring what was their Senſe in paſſing it, and on what Grounds; eſpecially in a Matter recent and within the Memory of many in the Houſe, as well as out of it.

7thly, Becauſe there were many obvious and good Reaſons why the Sum of One Hundred Thouſand Pounds *per Annum* for the Prince was not ſpecified in the Act paſſed at that Time, particularly his being a Minor and unmarried: But we do apprehend, that it is obvious that the Parliament would not have granted to his Majeſty ſo great a Revenue above that of the late King, but with an Intention that One Hundred Thouſand Pounds a Year ſhould at a proper Time be ſettled on the Prince, in the ſame Manner as it was enjoyed by his royal Father when he was Prince of *Wales*: And his Royal Highneſs being now Thirty Years old, and moſt happily married, we apprehend it can no longer be delayed, without Prejudice to the Honour of the Family, the Right of the Prince of *Wales*, and Intention of the Parliament. And as in many Caſes the Crown is known to ſtand as

Truſtee

Truſtee for the Publick, upon Grants in Parliament; ſo we humbly conceive, that in this Caſe, according to the Intention of Parliament, the Crown ſtands as Truſtee for the Prince, for the aforeſaid Sum.

8*thly*, Becauſe we do conceive, that the preſent Princeſs of *Wales* ought to have the like Jointure that her preſent Majeſty had when ſhe was Princeſs of *Wales*, and that it would be for the Honour of the Crown, that no Diſtinction whatever ſhould be made between Perſons of equal Rank and Dignity.

9*thly*, Becauſe we apprehend, that it has always been the Policy of this Country, and Care of Parliament, that a ſuitable Proviſion, independent of the Crown, ſhould be made for the Heir apparent, that by ſhewing him early the Eaſe and Dignity of Independence, he may learn by his own Experience, how a great and free People ſhould be governed. And as we are convinced in our Conſciences, that if this Queſtion had been paſſed in the Affirmative, it would have prevented all future Uneaſineſs that may unhappily ariſe upon this Subject, by removing the Cauſe of ſuch Uneaſineſs, and giving his Royal Highneſs what we apprehend to be his Right; we make Uſe of the Privileges inherent in Members of this Houſe, to clear ourſelves to all Poſterity, from being concerned in laying it aſide.

10. *Laſtly*, We thought it more incumbent upon us to inſiſt upon this Motion, for the Sake of this Royal Family, under which alone we are fully convinced we can live free, and under this Royal Family we are fully determined we will live free.

Winchelſea and Nottingham,	*Cardigan*,	*Weymouth*,
Berkſhire,	*Marlborough*,	*Bathurſt*,
Cobham,	*Carteret*,	*Coventry*,
Cheſterfield,	*Bridgewater*,	*Ker*,
	Bedford,	*Suffolk*.

Die Martis 18o *Novembris*, 1739.

His Majesty this Day came to the House, and open'd the Session, and made a Speech.

Upon which a Motion was made, That an humble Address be presented to his Majesty, returning him the Thanks of this House for his most gracious Speech from the Throne. To congratulate his Majesty on his safe Return to his Regal Dominions. To assure his Majesty, that we will stand by him with our Lives and Fortunes, in the Prosecution of the just and necessary War in which he is engaged. And as a further Proof of our Duty and Affection to his Majesty's sacred Person, Royal Family and Government, to assure him, that we will exert ourselves in our high Capacity of hereditary great Council of the Crown (to which all other Councils are subordinate and accountable) in such a Manner as may best tend to the promoting the true Interest of his Majesty, and our Country, in this critical Juncture.

Another Motion was made that their Lordships should resolve, That an humble Address be presented to his Majesty, to return him the Thanks of this House for his most gracious Speech from the Throne. To acknowledge his Majesty's great Wisdom, and his Adherence to the true Interest of his Kingdoms, in resolving to carry on this just and necessary War in the most proper Places, and in the most vigorous and effectual Manner; and in not suffering himself to be diverted or deterred from those Measures. To give his Majesty the strongest Assurances, that if any Power should attempt to prescribe or limit the Operations of War against his declared Enemies, such an extraordinary Proceeding would not fail to create a just Indignation in us, and determine us to concur in all proper Measures for vindicating and defending his

Dignity

Dignity and Honour against any Insults, and frustrating any Designs formed against us. To assure his Majesty, that this House will zealously stand by and support him in adhering to the Engagements he is under for maintaining the Balance and Liberties of *Europe*, on the Event of the late Emperor's Death, as well as in the Prosecution of the present War. To express our unshaken and unalterable Fidelity and Affection to his Majesty's Person and Government, and our antient Wishes, that all his Enterprizes for maintaining the Honour of his Crown, and the Rights of his People, may be blessed with Success.

In the Debate on these Motions it was proposed, to add to the second Paragraph of the first Motion these Words: [Or in any other War in which he may be necessarily engaged, for maintaining the Balance and Liberties of *Europe*, on the Event of the late Emperor's Death.] And to leave out the Words: [To which all other Councils are subordinate and accountable.]

Contents 38 The previous Question being then
Not Cont. 66 put, it passed in the Negative:

Whereupon a Motion was made and the Question was put, by Way of Amendment, to insert immediately before the last Paragraph, these Words, *viz.* [And as a farther Proof of our Duty and Affection to his Majesty's sacred Person, Royal Family and Government, to assure him, that we will exert ourselves in our high Capacity of hereditary Great Council of the Crown, in such a Manner as may best tend to the promoting the true Interest of his Majesty and our Country, in this critical Juncture.]

This Motion was disagreed to without any Debate:

And then it was proposed to agree to the second Motion without Amendment.

Whereupon the following Protests were entere *viz.*

Dissentient, *Macclesfield.*

1*st*, Because we conceive, that a Motion of this Nature ought not to have been laid aside by the previous Question; but we apprehend it would have been more consistent with the Honour and Dignity of this House to have passed it in the Affirmative, since it contained the strongest Assurances of our Duty to his Majesty, and of our Zeal to support him with our Lives and Fortunes in the Prosecution of this just and necessary War; moreover, it had been universally allowed in the Debate, that the antient Usage of this House was to return immediately a general Address of Thanks only for the Speech from the Throne, and to appoint a future Day for taking the said Speech into Consideration: By which wise Method of Proceeding, this House had an Opportunity of forming their Judgment and offering their Advice to the Crown, upon the several Matters contained in the Speech after due Enquiry and mature Deliberation.

2*dly*, Because, tho' the Speech from the Throne is in Parliament justly considered as the Act of his Ministers, yet a Motion pre-concerted, if not drawn by themselves, echoing back the Particulars of the Speech, is, as we conceive, a modern Expedient to procure a precipitate Approbation of Measures which might not be approved upon better Consideration. It was indeed alledged in the Debate, in Support of this Practice, that it was introduced during the late War, in the Administration of the late Earl of *Godolphin*; but we should also consider the Reason of it, (we heartily wish we had now the same) that the Zeal of the House was then every Year animated by the glorious Successes of the Queen's Arms under the Command of the Duke of *Marlborough*. And tho' it is always admitted

mitted that these hasty Addresses do not preclude the House from future Enquiries or Censures; yet should Censures, in Consequence of such Enquiries, become necessary, they would produce an Inconsistency between the first Address and the subsequent Resolutions, and argue a Levity highly unbecoming the Wisdom and Dignity of this House.

3dly, Because one Part of this Motion, the Congratulation upon his Majesty's safe Return to his Regal Dominions, could be liable to no Objection, but seemed at this Time peculiarly seasonable, since it was evident to the whole Kingdom, the Sailing of the Fleet, which had been delayed so long, was the immediate Effect of his happy Return.

4thly, Because we conceive, that our assuring his Majesty that we would exert ourselves in our high Capacity of hereditary Great Council of the Crown, would have given Encouragement to his Allies, Confidence to his Armies, and Satisfaction to his Subjects, especially in this critical Conjuncture, wherein the Advice of this House is more than ever necessary, since by the Inaction of this last Year in all Parts (except wherein Admiral *Vernon* commanded) notwithstanding the vast Fleets and Armies maintained at so immense a Charge, this just and necessary War seems hitherto to have been carried on by the same Spirit and Advice which so long delay'd the entering into it; and we conceive that the strictest Enquiries into such Conduct are the most probable Means of redressing our Grievances at Home, and bringing the War Abroad to a speedy and happy Conclusion.

Buccleugh,	*Bathurst*,	*Shaftesbury*,
Chesterfield,	*Gower*,	*Carlisle*,
Winchelsea and Nottingham,	*Stanhope*,	*Craven*,
	Bridgewater,	*Aylesford*,
Carteret,	*Litchfield*,	*Hallifax*,
Haversham,	*Willoughby de Broke*,	*Beaufort*,

Talbot, *Clifton*, *Thanet*.
Greenwich, *Denbigh*,

Then it was proposed to insert in the second stated Question, immediately before the last Paragraph, the Words of the first Question, except those in the Parenthesis, *viz.* "To which all other "Councils are subordinate and accountable."

Which being objected to,

Contents 35 The Question was put, Whether
Not Cont. 62 these Words shall be inserted?

It was resolved in the Negative.

Dissentient

Because when these Words made Part of the Question first moved, they were allowed by every Lord, who spoke in the Debate, to be proper and unexceptionable, and the following Parenthesis only ("To which all other Councils are subordinate and accountable") was objected to, as liable to a Misconstruction in another House; we cannot therefore but be surprized, that when this Question, freed from that Shadow of an Objection, (as we conceive) was offered as an Amendment to the Motion for an Address, it should have been rejected; and the more so, since the Negative passed upon it may be construed to imply, what we are persuaded no Lord in this House can intend, (whatever others may wish) "a Resolution not to enquire, advise, or "censure, even tho' just Suspicions, imprudent "Councils, or criminal Measures should require it."

Subscribed, *&c.* as before.

Eodem Die.

A Motion was made, "That an humble Ad-"dress be presented to his Majesty, that he will "be graciously pleased to give Directions, that "there be laid before this House Copies of all "Letters written by Vice-Admiral *Vernon* to the "Commissioners for executing the Office of Lord "High

" High Admiral of *Great Britain*, or their Secre-
" tary, and to his Majesty's principal Secretaries
" of State, from the Time of his sailing from
" *England* in the Year 1739, to the 24th of *June*
" last; and also Copies of all Letters written by
" the said Commissioners, or their Secretary, and
" the principal Secretaries of State, to the said
" Vice-Admiral, within the said Time."

Then it was proposed to add the following Words to the former Motion, by Way of Amendment. " So far as such Letters relate to any Sup-
" plies of Ships, Men, Stores, Ammunition, Pro-
" visions, or other Necessaries."

And Debate being had thereupon; the Question was then put, and the Motion carried with the Amendment.

Which produced the two following Protests, *viz.*

Dissentient, To the Negative put upon the first.

1*st*, Because we conceive, that the calling for all Instructions given to Generals and Admirals, is not only proper and precedented, but is also a necessary Step towards the Exertion of our Privilege, as hereditary Counsellors for advising the Crown, which Privilege can be properly exercised only in Matters depending. And, if from pretended Apprehensions of unseasonable Discoveries, Instructions are to be kept secret from this House, till after they have had their Effect, the Weakness or Guilt of the Measures of an Administration will appear probably too late to punish the Offenders, but certainly too late to prevent the Mischief.

2*dly*, Because we do not find any Negative put upon Motions for Instructions before the Year 1721; from which Time, indeed, Instructions began to be of such a Nature, that we do not wonder their Authors desired to conceal them. The Instructions by which our Fleet lay in shameful Inaction

action before *Gibraltar*, when besieg'd, and suffered the Enemy's Ships to bring Ammunition and Provisions to their Army, and those by which Three Admirals, about Thirty Captains, above One Hundred Lieutenants, and Four Thousand private Seamen, perished most ingloriously at the *Bastimentos*, create, as we conceive, a just Suspicion of all subsequent Instructions flowing from the same Source, and, in our Opinion, evince the Necessity of the strictest Enquiry, and most ample Informations in this important Conjuncture.

3dly, Because the Motion under the Limitations which accompanied it, was not even liable, as we apprehended, to the modern Objection of making improper Discoveries of future Designs; and it is impossible to conceive, that when Admiral *Vernon* sailed from hence with so small a Force as Five Ships only, and before the long-wish'd-for Declaration of War, that his Instructions could contain any Thing more than Orders for Reprisals: Since, considering his insufficient Force, any Orders to attempt even what he so happily and unexpectedly executed, would have been contrary to the Genius, and inconsistent with the too long-experienced pacifick Disposition of the Administration.

4thly, Because, that as the *West Indies* were allowed by all Lords in the Debate to be the proper Scene of Action, we think it our Duty more particularly to attend to the Conduct of the Administration in those Parts; especially since, from the Time of the Declaration of War, till very lately, that important Scene of Action seems to have been neglected or forgot; while, as we apprehend, the slightest Alarms have been fondly credited as Reasons for keeping our numerous Forces at Home, to the Oppression of the People; whereas a small Proportion of them, timely employed in the *West Indies*, against a then unprepared and unprovided Enemy,

Enemy, might probably have enabled Vice Admiral *Vernon* to have brought this just and necessary War to a speedy and happy Conclusion.

5thly, Because we apprehend that the Denial of these necessary Lights in the first Step of the Enquiry, not only casts a Damp upon the Enquiry itself, but must also lessen the Weight of any Resolutions that may be taken in the Course of it. The Nation that so unanimously expects and calls for an Enquiry into a Conduct, which at best seems to them unaccountable, if not blameable, will be confirmed in whatever Suspicions they might entertain, when the Lights necessary to remove those Suspicions are denied; and should we come to any Vote of Approbation, such a Vote may perhaps be misconstrued to be an influenced Compliance to the Administration, the dictated Result of a pretended Enquiry founded only upon imperfect Facts, and partial Representations.

Bathurst,	*Chesterfield*,	*Carlisle*,
Bridgewater,	*Middleton*,	*Aylesford*,
Willoughby de Broke,	*Thanet*,	*Denbigh*,
Bristol,	*Greenwich*,	*Westmoreland*,
Shaftesbury,	*Cobham*,	*Haversham*,
Talbot,	*Litchfield*,	*Hallifax*.
Gower,		

To the Amendment made to the second:

Dissentient

Because we conceive those restrictive Words will prevent the House from receiving that Information which we think absolutely necessary: For if Vice Admiral *Vernon*, in any of his Letters, has given it as his Opinion (as it is generally believed he has) that with a moderate Number of Land Forces he could have made such important Conquests in *North America*, as would have brought our Enemies before this Time to sue for Peace, this House had, as we apprehend, a Right to see such Letters, without

without which, we conceive, this Enquiry can only tend to detect the Negligence or Corruption of inferior Officers, and the capital Errors of the Ministers themselves may remain concealed.

Signed as before ——

Die Martis 8o Decembris, 1740.

A Motion was made, "That Copies of the several Instructions given to Rear Admiral *Haddock*, from the Time of his sailing from *England* in the Year 1738, to the 24th of *June* last, be laid before this House."

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And after Debate had thereupon, the Question was then put upon the said Motion.

And it was resolved in the Negative.

Dissentient

1. "Because we conceive that there never were Instructions more necessary to be examin'd, than those contain'd in this Question, in order to enable us to discharge our Duty both as Counsellors to his Majesty, and Guardians of the Nation,

"The known and astonishing Inaction, for the Space of above Two Years, of a great and powerful Fleet, fitted out and maintain'd at an immense Expence to the Nation, fixes a heavy Charge either upon the Commander of that Squadron, or upon those who gave him his Instructions. But when we compare the experienced Courage and Abilities of Rear Admiral *Haddock*, upon all former Occasions, with the inglorious Instructions given by this Administration to the several Admirals employ'd for these last Twenty Years, we cannot, as at present inform'd, but impute this unaccountable Inaction to the Weakness or Pusillanimity of those, whose Instructions, we are persuaded, he with Concern

"obey'd.

" obey'd. And we are confirm'd in this Opinion, " by his being ſtill continued in that Command, " which a Diſobedience to his Inſtructions would " have forfeited.

2. " Becauſe we think it neceſſary, that the " Houſe ſhould be fully inform'd, by what fatal " Miſtake, Negligence, or Deſign, the *Spaniſh* " Squadron at *Cadiz*, ſo long block'd up in that " Port, while they were neither ready, nor the Sea- " ſon of the Year fit for 'em to go out, ſhould have " been, by the ſudden withdrawing of our Fleet in " the *Mediterranean*, permitted to ſail without Mo- " leſtation, as ſoon as they were fit, and the Seaſon " favourable. And we cannot, as at preſent in- " form'd, impute that unhappy Meaſure to Sir " *Chaloner Ogle*, ſince, Orders of that great Im- " portance ought to be conceiv'd in the cleareſt, " plaineſt, and leaſt ambiguous Terms; which, " had he miſtaken, he would not have been, as he " now is, entruſted with the Command of ſo great " a Fleet, and with the Interpretation of In- " ſtructions of ſtill greater Conſequence. Nor " can we conceive, that the Communication of " Orders relating only to Sailing, and the Change " of Station, can ſufficiently clear up a Point of " that great Importance.

3. " Becauſe we think that the ſtale Objection, " that the Communication of theſe Inſtructions " may diſcover to our Enemies intended Deſigns " and Attempts, can have no Weight upon this " Occaſion, when the Reaſon for calling for thoſe " Inſtructions, is, becauſe no one Attempt of any " Kind whatſoever has been made upon our Ene- " mies in the Courſe of above Two Years; and it " is not credible, that if, during that Time, any " one Deſign had been intended, no one Attempt " ſhou'd have been made in Conſequence of it. " We therefore juſtly may, and only can conceive

" theſe

" these Instructions, which we are not allow'd to
" apply for, to be of the same inactive Nature of
" those which we have formerly seen flowing from
" the same languid Source, to the equal Dishonour
" of his Majesty's Councils and Arms.

4. " Because we conceive, that the Denial of
" these necessary Lights, puts a full Stop to any
" farther effectual Enquiry into the Conduct of the
" War; an Enquiry so becoming this House, and
" so unanimously called for by the Voice of the
" Nation, that outward Appearances have at once
" raised the Curiosity, the Astonishment, and the
" Concern of a brave and a loyal People, willing
" to sacrifice their Lives and Fortunes for the Ho-
" nour and Advantage of his Majesty and this
" Kingdom, in the Prosecution of this just and
" necessary War: And we conceive that they ought,
" by the strictest Enquiry, upon the fullest Inform-
" ations, to have been satisfied as to the past, and
" secured as to the future. And we think, that
" all minute Enquiries into the little Abuses of in-
" ferior Officers, over whom it is the Duty of the
" Administration to watch, would be only amusing
" and deceiving Mankind with the Name of an
" Enquiry, and descending from our Dignity of
" Counsellors of the Crown, and Checks of the
" Administration, to the low Rank of *Inquisitors*
" into the Conduct of petty and unprotected Of-
" fenders. We therefore think, that we have dis-
" charged our Duty to his Majesty and the Pub-
" lick, in having moved for those Papers, which
" we considered as the Foundations absolutely ne-
" cessary for a proper and effectual Enquiry. We
" here enter our Dissent upon the Denial of those
" Papers; the World must then judge of the Con-
" duct of the War, upon the Appearance of Facts
" and Circumstances; with this considerable, ad-
" ditional Circumstance, *That Lights were denied.*"

Litchfield,

Litchfield,	*Bridgewater,*	*Shaftesbury,*
Carlisle,	*Falmouth,*	*Abingdon,*
Haverfham,	*Talbot,*	*Denbigh,*
Hallifax,	*Bathurst,*	*Middleton,*
Thanet,	*Suffolk,*	*Aylesford,*
Oxford,	*Hereford,*	*Montjoy,*
Greenwich,	*Willoughby de Broke,*	*Ward,*
Northampton,	*Chesterfield,*	*Berkshire,*
Gower,	*Bristol,*	*Westmoreland.*
Cobham,	*R. Lincoln,*	

Die Veneris, 90 Decembris, 1740.

A Motion was made, That the augmenting the Army by raising Regiments, as it is the most unnecessary and most expensive Method of Augmentation, is also the most dangerous to the Liberties of the Nation.

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After Debate, the previous Question was put, whether the said Question shall be now put?

It was resolved in the Negative.

On which Occasion was entered the following Protest.

Dissentient

1*st*, Because we conceive, That this Motion ought not to have been laid aside by the previous Question, the Arguments urged in the Debate against our coming to this Resolution at this Time, being, in our Opinion, highly insufficient; since we cannot apprehend what further Lights could be had with Relation to the several Propositions contained in the Question, than those we received in the Debate, authorized by the Usage of almost all the Nations in *Europe*; nor were there any particular Papers pointed out, as necessary for the Information of the House; and we thought this the properest Time to come to this Resolution, before any

any Steps were taken as to the Method of making the intended Augmentation.

2*dly*, Becauſe it was proved in the Debate, and univerſally admitted, that the Augmentation of our Land Forces, by the raiſing of new Corps, was by near One Third, a more expenſive Manner of Augmenting, than by additional Men to Companies. A Conſideration which, in our Opinion, ought to have the greateſt Weight, at this Time, when the Nation is engaged in a new War, and ſtill groaning under all the Burthen of the laſt, though after Thirty Years Peace,

3*dly*, Becauſe, conſidering that the Oeconomy of augmenting the Forces by additional Men in Companies was admitted, that the Utility of it was not diſproved, we cannot help ſuſpecting, that the raiſing new Corps at this Time, when the Election of a new Parliament draws ſo near, may be of a dangerous Tendency to the Conſtitution of this Kingdom, and relate more to Civil than Military Service, eſpecially ſince there are now no Officers to be found (the Officers now remaining upon Half Pay having been already judged, by the Adminiſtration, unfit for Service) it is, in our Opinion, opening a Door to introduce a large Body of commiſſioned Penſioners. Theſe Suſpicions are ſtrengthened by the Experience we have had, That no Rank has been either above, or below miniſterial Reſentment, and the Severity of Parliamentary Diſcipline; and we muſt with Concern obſerve, that the Honour of the Nation, and the Fate of this important War, has been intruſted to raw and new-levied Troops, in order, as we apprehend, to keep the others at Home, only for civil Purpoſes.

Weſtmoreland, *Oxford*, *Litchfield*.
Suffolk, *Cobham*, *Aylesford*,
Willoughby de Broke, *Bridgewater*, *Northampton*,
Abingdon,

Abingdon,	*Thanet*,	*Bathurst*,
Halifax,	*Talbot*,	*Gower*,
Greenwich,	*Shaftesbury*,	*Briſtol*,
Middleton,	*Cheſterfield*,	*Berkſhire*,
Hereford,	*Carliſle*,	*Haverſham*.

Die Jovis 28o *Januarii*, 1740.

It was moved to reſolve, That an humble Addreſs be preſented to his Majeſty, that he will be graciouſly pleaſed to give Directions to the proper Officers, to lay before this Houſe ſuch Repreſentations, as have been made by Vice Admiral *Vernon*, in any of his Letters to his Majeſty's Principal Secretaries of State, or to the Commiſſioners of the Admiralty, in Relation to the Want of Ships, or more Men, or any Intimations of Service he could have performed, if he had been ſupplied with a few more Ships, and ſome Land Forces.

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The ſame was objected to, and after Debate thereupon, the Queſtion was put, whether ſuch an Addreſs ſhall be preſented to his Majeſty?

It was reſolved in the Negative.

Diſſentient

Becauſe we conceive, that the Houſe entered into this Enquiry, with a View to form a proper Judgment on the Conduct of the War; and ſome Extracts of Letters have been laid before us, but ſuch, as we apprehend, do not even anſwer the Demand of the Houſe, much leſs the End of the Enquiry; yet it appears plainly, from thoſe few Extracts, that Admiral *Vernon* has made frequent and grievous Complaints of the Inſufficiency of the Stores, and has repreſented them as fit only for a *Spithead Expedition:* We have therefore the ſtrongeſt Grounds to be perſuaded, that in ſome of his Letters, he has made Demands of more Ships, and more Men, tho' nothing relating to thoſe Articles

has been laid before us hitherto. Had he been sent out with a greater Force at first, or had fresh Succours of Ships and Men, with proper Stores, been sent after him in due Time, we are firmly of Opinion, that he would have gained such further Advantages as might long before now have proved decisive, but by the dilatory Proceeding of the Administration, as it appears to us, the Scene is much changed; the *Spanish* Fleet has been suffered to sail out of their Ports, to carry Supplies of all Kinds to their Garrisons; Opportunity has been given them to repair their Fortifications in *America*; and, which is still of more Consequence, as we fear, to procure the Assistance of another Power, who was not ready, if willing, at that Time, to give us any Disturbance in those Parts.

Greenwich,	*Berkshire*,	*Exeter*,
Bathurst,	*Shaftesbury*,	*Mansel*,
Bridgewater,	*Foley*,	*Thanet*,
Carlisle,	*Middleton*,	*Montjoy*,
Bruce,	*Suffolk*,	*Westmoreland*,
Gower,	*Haversham*,	*Ker*,
Aylesford,	*Buccleugh*,	*Cobham*,
Beaufort,	*Hereford*,	*Denbigh*.
Abingdon,	*Litchfield*,	

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Then it was proposed to order, that a Secret Committee be appointed to enquire into the Conduct of the War, consisting of all the Lords of this House who are of his Majesty's most honourable Privy Council. Which being objected to, after further Debate, the Question was put upon the second Proposition, and

It was resolved in the Negative.

Dissentient'

1*st*, Because the Necessity of Secrecy, and the Danger of communicating Matters of Importance, to so numerous an Assembly as this House, having been

been conſtantly urged as the only Arguments for refuſing the Lights abſolutely neceſſary for carrying on, with any Hopes of Succeſs, our Enquiry into the unaccountable Conduct of the War, we thought the propoſing of this Committee would fully have obviated thoſe Objections by confining the Knowledge of thoſe Secrets, (if any ſuch there be amongſt thoſe who by the Conſtitution are ſuppos'd and appointed to be informed of them) and the Negative put upon this Motion, gives us but too juſt Reaſon to ſuſpect, that the moſt material Tranſactions, with relation to this War, have even been concealed from thoſe, who, by their Situations, ought, in the very firſt Inſtance, to have been conſulted.

2dly, Becauſe the ſo often urged Argument of Secrecy proves too much, and may as often without, as with Reaſon, be uſed in Bar of all Enquiries, that any Adminiſtration, conſcious either of their Guilt, or their Ignorance, may deſire to defeat. It may not only prove the Security, but the Cauſe of a Sole Miniſter, Secrecy being undoubtedly beſt obſerved by one; and ſuch a Sole Miniſter may, by the ſame Reaſoning, as well refuſe the Communication of Meaſures to the reſt of his Majeſty's Council, and thereby engroſs a Power inconſiſtent with, and fatal to, this Conſtitution; and we cannot help obſerving, that ſuch a timorous and a ſcrupulous Secrecy, is much oftener the Refuge of Guilt, than the Reſort of Innocence.

Signed by the ſame Lords as before.

Die Martis, 3° *Februarii*, 1740-41.

The Order of the Day being read, for taking into Conſideration the ſeveral Eſtimates of the Charge of the Guards, Garriſons, and other Land Forces, the Charge of his Majeſty's Forces in the Plantations, *Minorca* and *Gibraltar*, and the Charge of Seven Regiments of Foot, and Four Regiments

of Marines, to be raised for the Year 1741, laid before this House, the 19th of *January* last.

It was moved to resolve, That an humble Address be presented to his Majesty, humbly representing to his Majesty, that this House cannot conceive the intended Augmentation of Land Forces to be necessary, either from the present Situation of Affairs in *Europe*, or from any Lights they have received; such as have always been thought necessary by our Ancestors, to justify the laying any extraordinary Burthens on the Subject: And most humbly to beseech his Majesty, that if he should however think so great an Augmentation absolutely necessary, he will, at least, be graciously pleased, as well for the present, as for the future Ease of his Subjects, to order it to be made in the most frugal Manner, by such an Addition of private Men to the present Regiments, as his Majesty, from his own Wisdom and Knowledge of the Practice of most other Countries, may judge to be most proper for Military Service, and least dangerous to this Constitution.

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Which being objected to, after long Debate thereupon, the Question was put, whether such an Address shall be presented to his Majesty?

It was resolved in the Negative.

Dissentient'

1st, Because we conceive, that nothing less than an evident and absolute Necessity should prevail with us, to consent to any Augmentation of our Land Forces, which in our Opinions are, at present, fully sufficient for any good Purposes, either Abroad, or at Home; being very near equal to the highest Establishment, during the whole Course of the last General War; the National Troops now subsisting (exclusive of those in *Ireland*) amount to 51515 effective Men: Whereas our greatest Number

Number of National Troops, in the last War, was but 67000 Men, including the Non-effectives; which, reduced to the Foot of the present Establishment, makes but 57000 effective Men; and the present intended Augmentation of 10325 Men, is such an Exceeding as can only be authoriz'd by the like publick Dangers; which Dangers not appearing to us, either from the Debate, or from any Information we have obtained, we are unwilling to trust more Force in the Hand of an Administration (which as far as we are able to recollect) have not hitherto employ'd any they have been so trusted with to the Honour and Advantage of the Nation. Extraordinary Trust and Confidence ought, as we apprehend, only to be placed in such, who, by the Experience of their past Conduct, have justly established their Credit, and entitled themselves to be so trusted. But when we look back upon the several Augmentations within these last Twenty Years, demanded and granted upon Causes more strongly asserted, than clearly proved, but visibly without any good End ever attained; and particularly when we reflect that by a most unaccountable Fluctuation and Contrariety of Measures, a very great Augmentation was made in the Year 1727, to act in Conjunction with *France*, against the House of *Austria*, for whose Defence the present Augmentation is said to be principally intended: We thought it our Duty to endeavour to prevent any unnecessary Increase of our Land Forces, not being influenced either by the pretended Apprehensions, or real Fears of an Administration, the Boldest in Domestic, but, as we apprehend, the most Pusillanimous in Foreign Transactions,

2*dly*, Because we conceive, that Dangers alledged from Disaffection at Home, are, in a great Measure, groundless; no Symptoms of such Disaffection having appear'd for many Years, and the Prin-

ciples upon which it was formerly grounded, being almost universally worn out and exploded. And we find it highly necessary to distinguish between Disaffection arising only from the Conduct of the Administration, and Disaffection to his Majesty and his Royal Family, tho' some may desire to blend them. For had the present General Dissatisfaction at the inglorious, tho' burthensome Measures of the Administration, been, in Truth, Disaffection to his Majesty, as hath been often falsly suggested by those who desire to confound his Cause with their own, twice the Number of Troops now proposed would not be sufficient to secure the Peace of the Kingdom; but, on the contrary, we are persuaded, that the Duty and Loyalty of the Nation to his Virtues, have check'd and kept the Dissatisfaction against the Administration within the due Bounds of Concern and Lamentation.

3dly, Because, considering the Advantage of our Situation, as an Island, and our Superiority at Sea, it is impossible for us to think ourselves in any Danger of an Invasion from *Spain*, even if those Fleets were now in their Ports, which we suffer'd them to send to *America:* Nor can we conceive, that about 28000 effective Men, not actually in this Kingdom, with all the Advantages of Horse and Artillery, is not Force sufficient to secure us from any Body of Foot, that any other Power could possibly land on our Coasts by Surprize. And, as for any great Embarkation, it can neither be made on a sudden, nor in Secret; we must have timely Notice to provide superior Fleets, (which, in such a Case, we presume, would be allow'd to act) to strengthen our own Corps, and render such an Attempt wholly impracticable: In which Opinion we are the more confirmed, because that in the most glorious Year of the last War, when the Duke of *Marlborough* and his Army were in the Middle of *Germany*, out of

of the Reach of giving us any Assistance at Home, it was not thought necessary, by the wise Administration of that Time, to keep above 9000 Men in this Island, for our Defence against *France*, then irritated by our Successes; and surely, three Times that Number must be now abundantly sufficient, unless more are wanted for Purposes not thought of by former Administrations, nor yet openly avow'd by this.

4thly, Because, whatever Demands may be made upon us, by our Allies on the Continent, we conceive may be answered by the Foreign Troops now in our Pay; and should any further Assistance to them be necessary, it will not only be cheaper, and safer to us, but more advantageous and agreeable to those Powers themselves, that we should furnish our Quotas in Money, with which they may raise a greater Number of Men than we are obliged to supply.

5thly, Because it has been undeniably proved, that this Method of Augmentation by new Corps, is, by 1-3d, more expensive than that of adding private Men to Companies; the Expence of raising those 5705 Men, amounting to 116,322 *l.* 14 *s.* 2 *d.* whereas 5780, raised by additional Men to Companies, with a Second Lieutenant to each Company, would have amounted but to 86,992 *l.* 15 *s.* which would be not only a present Saving of 29,329 *l.* but a future Saving of 10,134 *l.* *per Annum*, upon the Half-pay of the Officers of those Seven Regiments, the few Officers taken out of the Half-pay only excepted. And we think, that at a Time when the Publick Expence is so very considerable, the strictest Oeconomy is requisite, the better to enable a burden'd and indebted Nation to continue those Expences, that may be more necessary to be borne, than easy to be supply'd. And, as to the Advantage of the Service, the Facts plainly proved

in the Debate, together with the Practice of most other Nations in *Europe*, and, in particular, of his Majesty's Electoral Dominions, convince us, that if this Augmentation was made by additional Men to Companies, with a proper Increase of Serjeants and Corporals, the Military Service, at least, for which alone it ought to be intended, would be better carried on than by the Methods now to be pursued.

6thly, Because Arguments drawn from the Usage of *France*, we conceive, do not hold with Relation to us, it being well known, that the Expence of 150,000 *French* Troops do not amount to more than 500,000 *English*; that their Government, tho' once limited, is now absolute and military. That the Poverty of their numerous Nobility forces them into the Army, where the Court is glad to engage and keep them in Dependence; and that no Danger can arise to that Constitution from the Civil Influence, which may attend such an Establishment, their Parliament being only nominated by the Crown, and long since reduc'd, by Ministerial Arts, from their original Power and Dignity, to be no more than Courts of Justice and Revenue.

7thly, Because we apprehend that this Method of Augmentation by new Corps, may be attended with Consequences fatal in Time of our Constitution, by increasing the Number of Commissions which may be disposed of with Regard to parliamentary Influence only. And when we look back upon the Conduct of the Administration, in Relation to military Affairs, we have but too much Reason to suspect, that parliamentary Consideration have of late been the principal Causes of Favour and Disgrace. We have lately too, seen new-raised, raw, and undisciplined Regiments sent Abroad upon the most important Services, and others, seemingly much fitter for such Services, peaceably encamped at Home, for no other Reason, as is generally supposed,

posed, than the different Situation of the respective Officers of the several Corps: But this, at least, is certain, that in all the new-raised Regiments sent to *America*, there is but one single Member of Parliament, which could hardly have been the Case of any equal Number of Regiments in the whole Service. And what further induces us to entertain those Suspicions is, that this Method of Augmentation, by One Third the most expensive, and by no Means proved to be the most conducive to the Service, should be preferred at this Time, when an Oeconomy, proportion'd to the Greatness of our Expences, seems particularly requisite; since the War, by our Inaction hitherto, and the Advantages thereby given to the Enemy, may now probably be of long Duration, if not of doubtful Success. Our Distrust of the Motives of this Augmentation, which creates at once 370 Officers, which by the Removals in the Army may occasion three Times that Number of new Commissions, ought to be the greater, and our Care to prevent the ill Effects of it the more vigilant, so near the Election of a new Parliament; a Crisis, when any Increase of Influence gained to a Minister, may give a decisive and incurable Wound to this Constitution. And we cannot forget that an Augmentation of 8040 Men was likewise made the very Year of the Elections of the present Parliament, by bringing over eight Regiments from *Ireland*, and by additional Men to Corps in *Britain*, which Time has since shewn were never intended for foreign Service, though they were said to be designed for the Preservation of the Dominions of the House of *Austria*, which we then lay under the same Engagements both of Interest and Treaties to defend. The Number of Officers in Parliament has gradually increased, and is now more considerable than ever; and though we think the Gentlemen of the Army as little liable to undue In-

Influence as any other Body of Men, yet we think it would be very imprudent to truſt the very Fundamentals of our Conſtitution, the Independency of Parliaments, to the uncertain Effects of Miniſterial Favour or Reſentment. And as it is well known that the four eldeſt Officers of the Army, (the only Officers who have ſerved in any high Rank Abroad) are now diſplaced, without any Crime having ever been alledged againſt them, we have great Cauſe to dread, that an Army thus circumſtanced, and thus influenced, would, in each Capacity, be fatal to our Liberties, ſince Miniſterial Art in Parliaments can alone deſtroy the Eſſence of our Conſtitution, and open Violence alone, the Forms of it.

Ward,	*Montjoy*,	*Bedford*,
Buccleugh,	*Aylesford*,	*Gower*,
Denbigh,	*Cheſterfield*,	*Carliſle*,
Weſtmoreland,	*Halifax*,	*Foley*,
Exeter,	*Shafteſbury*,	*Thanet*,
Bridgewater,	*Cobham*,	*Ker*,
Greenwich,	*Bathurſt*,	*Hereford*,
Briſtol,	*Litchfield*,	*Manſel*,
Berkſhire,	*Beaufort*,	*Maſham*,
Falmouth,	*Macclesfield*,	*Talbot*,
Abingdon,	*Bruce*,	*Haverſham*.
R. Lincoln,		

Die Mercurii, 19° *Maii*, 1741.

It was moved to reſolve, that an humble Addreſs be preſented to his Majeſty, that he will be graciouſly pleaſed to give Directions to the proper Officers to lay before this Houſe all the Powers, Inſtructions, Memorials, Letters and Papers relating to the Convention concluded between *Great Britain* and *Spain*, dated at the *Pardo*, *January* 14, 1739, *N. S.*

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A Question was stated upon the said Motion. After Debate the Question was put, whether such an Address shall be presented to his Majesty?

It was resolved in the Negative.

Dissentient

1st, Because we thought an Enquiry into a Transaction of such great Importance to the Honour, Trade and Rights of this Nation, not only necessary, but totally free from all the Objections usually made to the Calling for Papers. The Convention having been concluded in *January*, 1739, and War having been since declared against *Spain*, so that we cannot conceive, that any Discovery prejudicial to this Nation, or advantageous to any other, can possibly result from an Examination into the minutest Particles of that Negotiation; but we rather apprehend from the manifest Unwillingness of the Administration to lay any such Lights before us, that Discoveries of another Nature would be the necessary Consequence of the Communication of the Papers called for upon the Question.

2dly, Because, when we compare the Conduct of the Administration thro' the whole Course of the *Spanish* Affairs, with several Circumstances that have accidentally appeared to the Publick, we conceive every Part of that Conduct liable to just Suspicions of one Kind or other. The repeated Application of the Merchants, both to the Crown and to Parliament, for Reparation for the past Losses, and future Security for their Trade, the universal Cries of the Nation upon their insulted Honour and violated Rights, the several Addresses of Parliament to the Crown, and the gracious Answers and Assurances given by the Crown in Return, seemed all to promise a just (and at that Time easy) Vengeance by the Force of our Arms, or an effectual Reparation of past and solid Security against future

future Injuries, by an advantageous Treaty of Peace, whereas a Convention only was concluded, by which a ſcanty and inſufficient Reparation for our injured Merchants was ſtipulated, and our moſt eſſential and undoubted Rights of a free Navigation to the *Weſt Indies*, without Search or Moleſtation, was at moſt referred to the future Diſcuſſion of Plenipotentiaries, if even it was ever mentioned at all.

3dly, Becauſe it has been aſſerted in a publick Paper, diſperſed all over *Europe* by the Court of *Spain*, that our Pretenſion to a free Navigation was never ſo much as mentioned by our Miniſters, till the Conferences ariſing in Conſequence of the Convention; and that the Demand was never made in Form till *July* 1739, which was after the Convention was broke by the Non-payment of the Money ſtipulated on the appointed 24th of *May*; and though we are far from aſſerting the Contents of ſuch Papers to be true, yet, as they cannot but raiſe ſome Doubt, that alone, in a Matter of ſuch great National Conſequence, ſeems to be a ſufficient Reaſon for a ſtrict Enquiry, eſpecially ſince we cannot ſee any Advantage that could ariſe to the King of *Spain* from aſſerting theſe Facts, if they were not true; but on the other Hand we ſee very ſtrong Reaſons why the Adminiſtration ſhould deſire to conceal them, if they are true.

4thly, Becauſe if the bare Suppoſition of Caſes that may poſſibly exiſt, is to be uſed as an Argument why the Houſe ſhould not apply for Lights, we conceive that the Suppoſition of other Caſes equally poſſible, and it may be more probable, is as good an Argument why the Houſe ſhould apply for ſuch Informations; conſequently, if we ſuppoſe that the Convention concluded at *Madrid*, *January* 14, 1739, was originally negotiated and executed at *London* in *Auguſt* 1738, with the *Spaniſh* Mi-

Minister then residing here, but that upon *Spain*'s inserting in the Body of the Ratifications of that Convention, an Act obliging our *South Sea* Company to pay the Sum of Sixty-eight Thousand Pounds towards the Reparation to be made to our Merchants, which Act was then intended to be kept secret, though since discovered by the necessary Communication of it to the *South Sea* Company, and their Non-compliance therewith; if we suppose that thereupon the same Treaty was re-executed by our Minister at *Madrid*, who was instructed at the same Time to consent to an Act of the same Import, but varied only so as to conceal it; and if we further suppose that this Sacrifice of the *South Sea* Company was originally proposed by one *English* Minister to the *Spanish* Minister, and upon his accepting it, rejected in an Office-letter by another *English* Minister, though afterwards brought into Execution; and if these Suppositions are in a great Measure confirmed by some of Mr. *Keen*'s Letters, which have been made publick, we conceive such Transactions ought not to be buried in Oblivion, and the Author and his Accomplices remain uncensured.

5thly, Because we conceive the Argument of its being too late in Point of Time, can be of no Force, and only tends to prove that the House will think no Time proper for calling for such Papers. Some have been refused to be called for by the House, because they related to the present Time, and whilst Matters were in Transaction, a Discovery might be dangerous; others, because they related to future Operations, and there also a Discovery of Designs might be detrimental. The present Motion related to Matters entirely pass'd, which being rejected, we must give up all further Hopes of receiving any Lights, relating either to past, to present, or to future Transactions. Posterity must therefore

therefore be convinced, that we have been reduced to the Neceſſity of taking Matters in the Groſs, and of weighing the Sum of Things, ſince the Particulars are hid from our Sight.

Carliſle,	*Bruce*,	*Bathurſt*,
Northampton,	*Maſham*,	*Aylesford*,
Suffolk,	*Ker*,	*Macclesfield*,
Manſel,	*Falmouth*,	*Ward*,
Gower,	*Weſtmoreland*,	*Hereford*,
Cobham,	*Exeter*,	*Litchfield*,
Greenwich,	*Clinton*,	*Beaufort*.

Die Jovis, 13° *Februarii*, 1742.

The remarkable Debate, which laſted two Days, upon the following Queſtion, *viz.* Whether an humble Addreſs ſhould be preſented to his Majeſty, that he would be graciouſly pleaſed to remove the Right Honourable Sir *Robert Walpole*, Knight of the moſt Noble Order of the Garter, Firſt Commiſſioner for executing the Office of Treaſurer of the Exchequer, Chancellor and Unde-Treaſurer of the Exchequer, and one of his Majeſty's moſt Honourable Privy Council, from his Majeſty's Preſence and Councils for ever.

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Diſſentient'

1*ſt*, Becauſe we are perſuaded that a Sole, or even a Firſt Miniſter, is an Officer unknown to the Law of *Britain*, inconſiſtent with the Conſtitution of this Country, and deſtructive of Liberty in any Government whatſoever; and it plainly appearing to us, that Sir *Robert Walpole* has, for many Years, acted as ſuch, by taking upon himſelf the chief, if not the ſole Direction of Affairs, in the different Branches of the Adminiſtration, we could not

not but esteem it to be our indispensable Duty, to offer our most humble Advice to his Majesty, for the Removal of a Minister so dangerous to the King and the Kingdoms.

2*dly*, Because we think it appear'd in the Debate, that, in many Instances, of infinite Consequence to the Interest of the Publick, he has grosly abused the exorbitant Power which he illegally possessed himself of, particularly in the Management of the publick Treasure. And this, we conceive, must plainly appear to every impartial Person who recollects, that, for these twenty Years past, this Kingdom has paid the largest Taxes that ever were imposed upon it in the Time of Peace; and yet that the publick Debts remain much as they stood at the Time when this Gentleman first entered upon the Management of the Treasury; and that the Civil List, also, the largest that was ever granted to the Crown, is, as we have the strongest Reasons to believe, considerably in Debt at this Time.

3*dly*, Because we conceive it was plainly proved in former Debates, that the Army, so greatly expensive to this Kingdom, and which only was granted by Parliament for the Defence of it, had been managed, both as to Rewards and Punishments, in such Manner as to make it of no military Use, but on the contrary, to render it subservient, as we apprehend, to the very worst of Purposes, the influencing Elections without Doors, and Votes within.

4*thly*, Because we are persuaded, that the vast Sums of Money, granted on different Heads for Sea Service, cannot possibly have been faithfully applied; there having been as much Money granted by Parliament in the last six or seven Years, upon the several Heads applicable to the repairing and rebuilding our Ships, as would have been sufficient to rebuild the whole Fleet of *Britain* from the Keels of

of the Ships, and have put them thoroughly equipp'd to Sea: And yet it is most notoriously true, that, since this War began, a very great Number of Ships have appeared to be in the worst Condition for Sea Service that ever they were known to be in the Memory of Man, and many of them scarcely fit for *Spithead* Expeditions; Ships having sailed out of the River destin'd, as was pretended, for foreign Service, that have with Difficulty been able to swim into the Docks of *Portsmouth* and *Plymouth* for further Repairs.

5thly, Because we apprehend that, by the Conduct of Sir *Robert Walpole*, in Relation to foreign Affairs during the Course of his Administration, the Ballance of Power in *Europe* has been destroy'd; the House of *Bourbon* has been aggrandized in many Instances, particularly by the Addition of *Lorain*. The House of *Austria* has been depress'd by the Loss of Part of the Duchy of *Milan*, and the whole Kingdoms of *Naples* and *Sicily*: And if such a Change in the System of *Europe*, occasioned by the Misconduct of any Minister whatsoever, would be criminal, we cannot think it the less so in one who join'd in the Prosecution of the Authors of the Treaty of *Utrecht*, upon the particular Charge of having reduced the House of *Austria* too low, and left the House of *Bourbon* too powerful.

6thly, Because it is a Fact not to be contradicted, that the *Spaniards* were permitted quickly to possess themselves of the Land belonging to our most important Fortress of *Gibraltar*, which this Kingdom was in Possession of, by Virtue of the Treaty of *Utrecht*, till the last Siege of that Place, by which Permission Fortifications were erected, and Batteries rais'd upon the said Ground by the *Saniards*, whereby the Use of the advantageous Bay of *Gibraltar* is lost to *England*, and our Ships ever since forced to anchor both inconveniently and dan-

dangerouſly under the Walls of the Town; and what naturally raiſes the ſtrongeſt Suſpicions in us of this unwarrantable Proceeding, is, that a *Britiſh* Admiral, ſoon after, was at *Cadiz* with a powerful Squadron of Ships of the Line, at the Time the *Spaniards* thus unjuſtly broke their Treaty, and that Admiral quietly and undiſturbed left them in Poſſeſſion of that Ground, and convoyed their Troops to take Poſſeſſion of the Dominions of *Tuſcany*.

7thly, Becauſe the Papers upon the Table, delivered to this Houſe from the Commiſſioners of the Cuſtoms do plainly prove, that Sir *Robert Walpole*, by publickly conniving for many Years at the Trade carried on with this Nation from the Port of *Dunkirk*, has given up the 9th Article of the Treaty of *Utrecht*, which we cannot but look upon as a high Miſdemeanor, and the greater Crime in him, that no Man whatſoever declared himſelf with more paſſionate Zeal than he did, againſt the Authors of the Treaty of *Utrecht*, for having favoured *France* in moſt of the Articles in it, which were inconteſtably ſtipulated for the Intereſt of this Crown and Nation.

Bridgewater,	*Weſtmoreland*,	*Macclesfield*,
Litchfield,	*Halifax*,	*R. Litchfield and Coventry*,
Talbot,	*Buccleugh*,	*Cobham*,
Bruce,	*Manſel*,	*Falmouth*,
Clinton,	*Denbigh*,	*Aylesford*,
R. Lincoln,	*Berkſhire*,	*Bathurſt*,
Beaufort,	*Carliſle*,	*Abingdon*,
Exeter,	*Haverſham*,	*Greenwich*,
St. John de Bletſoe,	*Ward*,	*Briſtol*.
Gower,	*Cheſterfield*,	
Bedford,	*Hereford*,	

Then the previous Queſtion was put and carried. Upon which the following Proteſt was entered.

Dissentient

Because we think this Question ought not to have been put at this Time; for though the Proposition contained in it is undoubtedly true in itself, yet we apprehend it to be no wise applicable to the Point which had been so long debated the same Day. For we conceive that publick Utility may render it necessary that a Person should be removed from an Office, and yet that Removal cannot be deemed a Punishment; for Instance, in the Case of Incapacity. Surely then, wilful Neglects, Breach of Duty, and evident Malversation in an Office, may justly require this great Council of State to present an humble Address to his Majesty for the Removal of any Person guilty of such Crimes, in order to prevent publick Detriment. And we cannot apprehend, that the Motion which occasioned the former Debate, was by no Means void of Proofs; since the Treaties and Papers referred to (being as Records in the Possession of the House) and the Notoriety of many Facts alledged, were, in our Opinion, equal to a Cloud of Witnesses. For these Reasons, although we agree to the Matter contain'd in the Question, and, acting in our judicial Capacity, would never err from the Rules laid down in it, yet we cannot but wish the Question had been laid aside, lest a wicked Minister hereafter should think himself secure in his Office, if he cannot be brought personally to answer at the Bar of this House, and Witnesses, *Viva voce*, cannot be produced.

Signed by the Names as before, with the Addition of *Sandwich*.

Die Martis, 26o *Februarii*, 1740-1.

The Order of the Day being read for the second Reading of the Bill entitled, *An Act for the better securing the Freedom of Parliaments by limiting the Number*

Number of Officers in the House of Commons. The said Bill was read a second Time, and it being mov'd to commit the Bill, the same was objected to. After Debate, the Question was put, Whether the said Bill shall be committed?

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Not Cont. 63 It was resolv'd in the Negative.

Northampton, *Shaftesbury,*
Stanhope, *Clifton.*

Dissentient

1*st*, Because we conceive, that our Constitution itself points out this Bill, as one of its principal Securities; a due Poize and Independency of the three several constituent Parts of the supreme legislative Power, being required by the Spirit of our Constitution, and absolutely necessary to its Existence. If any one of these becomes dependent on the other, the Constitution is dangerously altered: But if any two become dependent on the third, it is totally subverted, and the wisest Establishment that ever was formed of a free Government, shrinks and degenerates into a *Monarchial* and *Aristocratical*, or *Democratical* Faction. We therefore think we cannot be too careful in providing against whatever may, at any Time, affect this just Poize, and necessary Independency of the three Estates. And this Caution seems the more requisite, now, when, from the inevitable Variation of Things, Employments are become exceedingly numerous, and are yet further artfully split, divided, subdivided, and increased in Value, in order to add both Extent and Weight to their Influence. Two Hundred Employments are distributed in the present *House of Commons*; a dangerous Circumstance! and which, if it could have been foretold to our Ancestors, even in the latter End of the last Century, the Prediction would have been rejected by them as chimerical, or, if believed, lamented as

fatal; and ſhould the Number of Employments continue to increaſe in the ſame Proportion, even we may live to ſee, for Want of this Bill, a conſtant Majority of Placemen meeting under the Name of a Parliament, to eſtabliſh Grievances inſtead of redreſſing them; to approve implicitly the Meaſures of a Court without Information; to ſupport and ſcreen the Miniſters they ought to controul or puniſh, and to grant Money without Account, or it may be, without Bonds. In which Caſe, the remaining Forms of our Conſtitution would, by creating a fatal Deluſion, become our greateſt Grievance.

2*dly*, Tho' we don't abſolutely aſſert, That Employments neceſſarily muſt, yet we cannot ſuppoſe, that they never will, influence the Votes and Conduct of the Gentlemen of *the Houſe of Commons*; for ſuch a Suppoſition would be equally concluſive againſt all the Acts of Parliament now in Force, limiting the Number of Officers of any Kind in that Houſe; and, in a Caſe of ſuch Importance, we think it would be the higheſt Imprudence, to truſt the very Being of our Conſtitution to bare Poſſibilities; eſpecially if an Experience (which we rather chuſe to hint at than enlarge upon) ſhould give us juſt Reaſon to ſuſpect, that former Parliaments have felt the Effect of this baneful Influence, almoſt all Perſons in Employments having voted invariably on the ſame Side of the Queſtion, often againſt the known and ſignified Senſe of their Conſtituents, and ſometimes perhaps even contrary to their own private Declarations; and no ſooner did they preſume to deviate from the miniſterial Track, than they were diveſted of thoſe Employments that failed of their intended Influence. But, admitting that the preſent *Houſe of Commons* has kept itſelf moſt untaintedly pure from ſuch Pollution; yet we think it neceſſary, not to expoſe future

future Parliaments to ſuch a Trial, nor the Conſtitution to the Uncertainty of the Deciſion.

3dly, Becauſe, though it ſhould be granted, that this Bill would have reſtrained in ſome Degree the Liberty of the Electors, that Objection has no Weight upon this Occaſion, every Law being, in ſome Degree, a Reſtraint upon the natural Liberty of Man, but yet juſtly enacted, wherever the Good of the Whole (which ſhould be the Object of every Law) is promoted thereby; and we apprehend, that this Reſtraint is of ſuch a Nature, that thoſe only will be uneaſy under it who intended to abuſe the Liberty. The Votes of the Electors of *Great Britain*, if unbiaſſed, would rarely concur in the Choice of Perſons who were the avowed Creatures of a Miniſter, known Dependants on a Court, and utterly unknown to thoſe who elect them. But if, in an Age when Luxury invites Corruption, and Corruption feeds Luxury, there is too much Reaſon to fear, that the People may be prevailed upon, in many Places by a pecuniary Influence, to give their Votes to thoſe whom their uninfluenced Sentiments would reject with Indignation and Contempt, we think it neceſſary to lay this juſt and conſtitutional Reſtraint upon the Liberties of ſome, as the only Means to preſerve the Liberties of all. By former Acts of Parliament, the Electors are already debarred from electing Perſons in certain conſiderable Employments; and in the *Act for preſerving our Conſtitution*, by ſettling the Crown upon the preſent Royal Family, it was enacted, That no Perſon whatſoever in Employment ſhould be capable of being choſen a Member of *the Houſe of Commons*. Such was then the Spirit of Liberty, that even this total Excluſion could not be refuſed, nor could the Repeal of it afterwards be obtained, without enacting a Limitation of Placemen allow'd to ſit in *the Houſe of Commons*, and a new Election

of every Person who, whilst he was a Member of that House, should accept of any Employment under the Crown; as likewise a Total (we wish we could say an Effectual) Exclusion of all Persons holding Employments erected since the passing of that Act; and there is no Reason to doubt, but that the same Spirit of Precaution would, upon the same constitutional Principles, have been carried much farther at that Time, could it then have been foreseen or imagined, that the Exclusion of some Civil Officers would have been rendered useless, by the Introduction of so many military ones; and so many Persons in Employments, infinitely inferior, both in Rank and Profit, to those excluded by these several Acts, could ever have been by any Means elected into Parliament: And indeed it seems to us highly incongruous, that Inferior Clerks, and Attendants of Offices, who have not Seats in the Presence of their Masters, should be admitted to have Seats in the Legislature, and therefore become the Check and Controul of their Masters themselves.

4*thly*, Because we do not apprehend, that the Freedom of Parliament is now in the least secured by the Obligation laid upon all Members of *the House of Commons*, who accept any Employment under the Crown, of being re-elected, Experience having shewn us, that this seeming Security is for the most Part become ineffectual, there being very few Instances of Persons failing in such Re-elections, tho' utter Strangers to their Electors; and it is natural to suppose, that, when the Means of corrupting are greater, the Success of the Candidate recommending himself, by Corruption only, will not be less.

5*thly*, Because we observe with Concern, that a Bill of this Nature has been already thrice rejected by this very *House of Commons*, and not been allowed

lowed to be committed, so as to have it known how far it was proposed to extend, which, in our Opinions, implied a firm Resolution not to admit of any further Exclusion of Employments whatsoever: Whereas, in this last Session of this Parliament, this Bill was sent up to us, after having passed through all the Forms of the other House without the least Opposition. This, we conceive, can only proceed either from their Conviction at last of the Necessity of such a Bill, of which they are surely the propereſt Judges, or in Compliance with the almost universal Instructions of their Constituents, whose Voice we think ought to have some Weight even here; or, lastly, to delude their Constituents themselves, by tacitly consenting to what they were either told, or hoped, this House will refuse. And in this Case we apprehend, That a Confidence so injurious and dishonourable, ought to have been disappointed from a just Sense of the Contempt thereby shewn of the Credit, Weight, and Dignity of this House.

6thly, Because we think it particularly seasonable, so near the End of this Parliament, to provide for the Freedom and Independency of the next: And as we consider this Opportunity as the only one we are likely to have, for some Years at least, to do it, it is with the greater Concern that we see this Bill laid aside, rather by a Division than a Debate, and by Numbers rather than Arguments. But however unsuccessful our Endeavours have been for the future Security of this Constitution; however unavailing our Desire of enquiring into past and present Transactions; however fruitless our Attempts to prevent future Mismanagements, by a Censure of the past, and the Removal of the Author of them: We have at least this Comfort of transmitting our Names to Posterity, as dissenting from those Measures of which the present Age suf-

ficiently testifies its Dislike, and of which the next may too probably feel the fatal Consequences.

Abingdon,	*Warrington,*	*Ward,*
Bridgewater,	*Bruce,*	*Mansel,*
Haversham,	*R. Litch. and*	*Cobham,*
Macclesfield,	*Coventry,*	*Chesterfield,*
Greenwich,	*Carlisle,*	*Masham,*
Hereford,	*Talbot,*	*Halifax,*
Aylesford,	*Gower,*	*Denbigh.*

I dissent for all the above Reasons, except the last.

Foley.

Die Martis 9° *Martii,* 1740-41.

Hodie 3a *vice lecta est Billa,* An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters, Then the Question was put, whether this Bill shall pass?

It was resolved in the Affirmative.

Dissentient

Because it does not appear to us, that the Forces which are now kept up within this Realm, are to be employed to annoy our Enemies Abroad; and we are satisfied, the Affections of the People to his Majesty and the Protestant Succession are such, that there can be no Occasion for them to keep this Nation in Awe.

Abingdon,	*Litchfield,*	*Warrington.*
Aylesford,	*Carlisle,*	

Die Martis 22° *Decembris,* 1741.

A Motion being made, that an humble Address be presented to his Majesty, that he will be graciously pleased to give Directions, that there be laid before this House, Copies of all Memorials, Representations, Declarations and Letters, which have been sent either to his Majesty or his Ministers, by the Queen of *Hungary* or her Ministers, or by his Majesty or his Ministers, to the Queen of *Hungary*

or

or her Miniſters, with the reſpective Anſwers to ſuch Memorials, Repreſentations, Declarations and Letters: And of all Letters wrote by either of his Majeſty's Principal Secretaries of State, or any other of his Majeſty's Miniſters, to his Majeſty's Miniſter reſiding at the Court of the Queen of *Hungary*, or by the ſaid Miniſter to either of his Majeſty's Principal Secretaries of State, or any other of his Majeſty's Miniſters, relating to the State of the War in the Empire, and the Supports and Intereſts of the Houſe of *Auſtria*, ſince the Death of the late Emperor. The ſame was objected to: And a Queſtion being ſtarted thereupon, it was propos'd after the Word [*Decalration*] in the former Part of the Queſtion, to leave out theſe Words [*and Letters*] which being objected to: After Debate, the Queſtion was put, whether thoſe Words ſhould ſtand Part of the Queſtion?

It was reſolved in the Negative.

And it being propoſed to inſert, after the Word [*Miniſters*] mentioned in the 4th Place ["and of all Letters which have been ſent to his Majeſty's Miniſters by the Miniſters of the Queen of *Hungary*."] The ſame was objected to.

Then it was propoſed to leave out theſe Words ["and of all Letters wrote by either of his Majeſty's Principal Secretaries of State, or any other of his Majeſty's Miniſters, to his Majeſty's Miniſter reſiding at the Court of the Queen of *Hungary*, or by the ſaid Miniſter to either of his Majeſty's Principal Secretaries of State, or any other of his Majeſty's Miniſters,"]

Which being objected to:

The Queſtion was put, whether thoſe Words ſhould ſtand Part of the Queſtion?

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It was reſolved in the Negative.

Diſſentient

Dissentient

Because the leaving out those Words in the Motion invalidates the Address to the greatest Degree, by denying the necessary Lights to see into Affairs of the utmost Concern to the Nation, and Transactions most probably in Agitation between *Great Britain* and the Queen of *Hungary*, inasmuch as there is neither Matter nor Means sufficient to give his Majesty our best Advice upon, although so graciously asked from the Throne at this critical Conjuncture. Besides which, it is apparently putting such a Check and Restraint upon the Privilege of the House of Peers in wording Addresses to the King, as may prove of the utmost Prejudice and Loss to both, which the Nation in general would in Consequence be Sufferers by, should this be made Use of by ministerial Artifice or Power, at any Time to come, as a Precedent to defeat or annul Addresses of this Kind, whereon the Freedom and Safety of his Majesty's Person, and the Protestant Succession and Government so eminently depend.

Haversham.

Then a Motion was made for the like Papers relating to the *French* King, which was carried in the Negative by 60 against 30. To which his Lordship likewise dissented for the same Reasons.

Dit

Die Martis 28o *Januarii*, 1741.

The Examination of Major General ANSTRUTHER, *Lieutenant Governor of* Minorca, *before the* House of Lords, *on* 28 January, 1741; *and the Protest thereupon*

Major General *Anstruther* attending (according to Order), was called in; and being sworn, was shewed the List of the several Officers upon the Establishment of *Minorca*; whereby it appears what Number of them are absent, and the Nature of their respective Offices: And was directed to give the Reasons (as far as he knew) which occasioned their Absence.

TO the Earl of *Hartford*, Governor, says, the Occasion of his Absence is from being infirm, and not able to travel; and from that Infirmity he has never been able to go to the Island.

To the Lieutenant Governor (*viz.*) himself, says, I'm absent by his Majesty's Leave.

Q. When did you come away from the Island?

A. I left the Island the 15th or 16th of *February* last; I cannot be positive which, but it was one of those Days.

Q. Upon what Account did you leave the Island?

A. I had Leave upon my own Application.

Q. By what Order did you come away?

A. The Leave that all Officers have comes regularly from the Secretary at War.

Q. Whether you made the Application for coming Home yourself, and to whom you made it?

A. I made it in the Way all Applications are made; to the Secretary at War: I have the Leave of

of Absence in my Pocket sent to me by the Secretary at War, by the King's Order.

[Which he produced, and the same was read.

Q. On whom did the Command devolve, upon your coming away?

A. The Command always devolves upon the oldest Commanding Officer, and that was Brigadier *Paget*.

Q. As this was a conditional Leave, whether you were under any Apprehensions of an Attack from the *Spaniards*; or whether the Design of the *Spaniards* had actually been laid aside when you left the Island?

A. I understand any Leave of Absence to be conditional; that I had no Leave of Absence, if I was under any Apprehensions of the Island's being attacked: Before I left the Island I had certain Intelligence of the Enemies having carried off Part of their Mortars, and Part of their Troops from *Majorca*, which was the Place from which they designed to attack the Island.

Q. Whether before you left the Island you had any Correspondence with Admiral *Haddock*, or consulted him so as to know his Thoughts with Regard to the *Spaniards* having laid aside their Design to attack the Island?

A. Tho' I was very sure from my own Intelligence the Design was laid aside for that Time, yet I applied to Mr. *Haddock* to know if he had any Intelligence to the contrary, who agreed with me, and that he had none.

Q. What Quantity of Cannon was carried away, and what remained at *Majorca*?

A. As to what Quantity that was carried from thence, I cannot be positive; what was brought from *Barcelona* thither I knew exactly, as well as the Number of Mortars. There were 2500 Men carried

carried back from *Majorca* to *Barcelona* along with Part of their Artillery.

Q. Whether the Report of *Minorca*'s being in Danger of an Attack from the *Spaniards* did not ceaſe juſt at the Time, or a little after the Time, that the *Spaniſh* Squadron ſail'd from *Cadiz* to the *Weſt Indies*?

A. I think what prevented the Iſland's being attacked at that Time was, Five Ships that Mr. *Haddock* brought from *Gibraltar*, which he conceived to be Force enough to prevent any Attack being made upon the Iſland. My Intelligence was, that they deſigned to come into the Iſland with a Body of 16,000 Men, 9000 whereof were to come from *Barcelona*, and 7000 from *Majorca*; after this Mr. *Haddock* came up with his Ships, and I am ſatisfied that was what prevented the Attack.

Q. Aſked the ſame Queſtion again, as to the Time of the Report ceaſing?

A. The Fleet ſailed ſome Time after that, about three Weeks or a Month after that, to the beſt of my Remembrance.

Q. At what Time did Mr. *Haddock*'s Ships come to *Minorca*?

A. I cannot charge my Memory with the exact Time.

Q. Whether in your Opinion 16,000 Men are neceſſary to make the Siege of *Fort St. Philip*, or whether 10,000 are not ſufficient?

A. If it's agreed, as the *Spaniards* believed, that the People of the Iſland are in their Intereſt, what the noble Duke ſays I believe might be ſufficient; becauſe when thoſe Troops were to come over, by my Intelligence, there were Arms for 70,000 Men, that it's poſſible they imagined the Iſland would furniſh them with; which makes me believe they did think the People of the Iſland would have joined them. But had that Number of

of Men been in the Interest of the *English*, the noble Duke knows 16,000 Men would scarce be sufficient.

Q. Whether the Island can't be attacked from *Barcelona?*

A. To be sure the Island can be attacked from any Part of *Spain.*

Q. Whether the Number of Troops left in *Majorca* were sufficient to make you fear any Danger?

A. I apprehend no Danger from the Troops left in *Majorca.*

Q. Whether the Commission you have, as Lieutenant Governor, gives you the same Powers as the Governor would have if he was present?

A. I understand it does.

Q. Acquaint the House with the Nature of these Powers?

A. The Civil Government of that Island is carried on by Judges of the King's Nomination, Natives of the Island; they are governed by their own Laws, the Governor has a Power upon the Judges (being of different Opinions) to agree with those whose Opinion he thinks best.

Q. Had Colonel *Paget*, upon your going away, the same Powers which you had when you were present?

A. I understand he had. It has been the Custom there, that any Commandant, in the Absence of the Governor and Lieutenant Governor, to exercise the same Powers.

Q. Has the Commandant these Powers in the Absence of the Lieutenant Governor of Course, or has he any particular Commission for that Purpose?

A. I do not understand he has any particular Commission for them.

Q. Whether

Q. Whether you, when you are there, act by a military Commission, or by a particular Commission as Lieutenant Governor?

A. I act by a Commission from his Majesty as a Lieutenant Governor.

Q. Whether, in Case the Island stood Neuter, 10,000 Men were sufficient to form a Siege, and succeed in it?

A. As to the Success of the Siege I cannot say; but I should think, if the Troops were compleat, 10,000 Men would find great Difficulty in conquering the Fort.

Q. Whether Admiral *Haddock* had not, at that Time, sufficient Numbers of Ships to prevent any Attempt upon the Island, except the *Spaniards* had been superior at Sea?

A. 'Tis my Apprehension, while there is a Fleet in the *Mediterranean* superior to the *Spanish* Fleet, any Attempt upon the Island will never be made, there's no Manner of Doubt of it; for I believe nothing but Mr. *Haddock*'s coming with Five Ships, as I mentioned before, prevented the Attack.

Q. What is your Opinion of the Disposition and Temper of the People; whether they would have sided with the *Spaniards* if an Attack had been made?

A. The People in that Island, since it has been in the Possession of the *English*, have been much happier than ever they were formerly, and greatly richer; notwithstanding which, I may venture to assure their Lordships, that they would join the *Spaniards*.

Q. Whether the State of the Establishment laid before the House, which you have in your Hand, is the same now as it was when you left the Island; and what Variations, if any?

A. One of the Secretary's I brought along with me from the Island; there's the Fort Major has had

had his Majesty's Leave very lately. I don't know of any other Alteration.

Q. Whether the Regiments were complete, as to Men and Officers, when you left the Island?

A. No, my Lords; but there may be laid before your Lordships an Account of the Men raised for the different Regiments in that Island since the late Augmentation, which I make no doubt would convince their Lordships that there has been no Neglect: But the Death and Desertion of the Men that are listed here, for that Place, make it impracticable to keep them complete in the common Way of Recruiting here.

Q. What Number of Officers were absent at that Time, and what Number of Men were wanting to complete the Regiments?

A. I really cannot acquaint their Lordships with that upon Memory; but there's an Account of that in the Returns that were sent from the Island.

Q. Whereabouts was the Number of Officers and Men wanting?

A. I know there were a great many Men wanting; I believe near 700.

Q. What Number of Officers?

A. I can't recollect; but I believe not so many Officers as Men in Proportion.

Q. Whether there was not, at that Time, a Number of Recruits raised, and some upon the Sea going thither?

A. To be sure there are always Recruits going thither; I have sent 40 Men within this Fortnight, and have a great many more to go.

Q. Whether you think it is possible for the Regiments at *Port Mahon* to be perpetually full, and whether there is a Fund sufficient to keep them so?

A. It's

A. It's utterly impossible; there may be an Account laid before your Lordships of Recruits which cost the Captain Forty Pounds a Man.

Q. Whether it's possible to keep the Regiments more complete then they were when you left the Island?

A. To be sure they may be more complete; but we were under some Misfortunes of losing Recruits in their going thither.

Q. Whether you do not think there might have been such Methods taken as would have kept those Regiments as complete as other Regiments are kept?

A. In Place of Recruiting in the ordinary Way, if there had been Draughts sent once a Year to complete those Regiments, to be sure they wou'd have been more complete than they are now, tho' there are many Objections to the Draughting of Regiments.

Q. Whether you ever met with any one Colonel that did not complain whenever his Regiment was draughted?

A. I believe there's no Colonel of a Regiment that inclines to have his Regiment draughted.

Q. Whether you yourself, in your Correspondence here, have not complained of the Number of Officers absent, and Men wanting?

A. I have represented that there were too many Officers wanting, and that the Regiments were not complete.

Q. Whether you have not complained of it often?

A. I have represented it; but upon my Memory can't tell whether once or twice.

Q. What Answer did you receive?

A. Upon my first Complaint his Majesty was pleased to order a Draught of Men from *Ireland*, to complete the Regiment I found in the Island. I

was afterwards told, that the proper Orders were given to those proper Officers to repair to their Posts.

Q. Whether you found any Effect of those Orders that you were told was given?

A. Upon those Orders several Officers attended, but not all.

Q. Whether you do not know that Orders were several Times published in the *Gazette* for all Officers to repair to *Minorca*, notwithstanding any Leave of Absence; and whether Letters were not wrote to the Commanding Officers of the Regiments there, and particularly of your own Regiment; acquainting them with those Orders, and directing them to make Returns of such Officers as did not attend upon those Orders?

A. I know those Orders were given, and upon those Orders several Officers did attend. I sent over, from Time to Time, a Return of the absent Officers, and of the Non-effective Men, by which the Secretary at War might readily know who did obey those Orders, and who did not.

Q. Whether upon the repeated Accounts and Returns you made of the Officers absent, you ever heard that any of the Officers absenting themselves in this Manner were ever brought to a Court Martial?

A. I know of none being brought to a Court Martial in that Island for that Crime.

Q. Whether you have ever heard from *England*, that any of them were brought to a Court Martial?

A. About seven Years ago I had an Officer in my Regiment broke for disobeying the King's Order to attend his Post; I had another Example later than that, about ten Months ago.

Q. Whether

Q. Whether you now have the last Return you made of Men and Officers wanting?

A. The Returns are in the War Office.

Then he proceeded to the next Officer upon the List, the Commissary General of the Stores and Provisions, the Lord Viscount *Irwin*, who is absent, and says, That Office is always executed by a Deputy.

The next upon the List is the Deputy Judge Advocate and Commissary of the Musters, Sir *Anthony Westcomb*, Bart. who is absent; says, He was there a Number of Years, but has acted by a Deputy for eight or nine Years.

The next upon the List are the joint Secretaries, *George Montcreeff*, and *Theophilus Bancon*; says, Mr. *Montcreeff*, one of the Secretaries, I brought over with me Papers relating to the Island; the other Secretary is there, and has always continued there.

The next upon the List is the Chaplain, *James Auchmuty*, who is absent; says, He has lived there for a considerable Number of Years, and has been absent, to the best of my Remembrance, about eight Years.

The next upon the List is the Captain of the Ports, *Robert Frampton*, who is absent; says, This is a Gentleman that I never saw, and who never was in the Island.

Q. What is his Duty?

A. His Duty is, to lock the Gates of the Fort, and bring the Keys to the Commanding Officer at Night, and to open them in the Morning; which is now done by the Adjutant of the Fort.

Q. Do you know where he is, or any Thing of him?

A. No, I do not.

Q. How long has he had this Office?

A. He succeeded one *Dobbins*, to the best of my Remembrance, about two Years ago.

Q. What is his Salary, or Pay?

A. I believe it is a Crown a Day: I can't be positive, but I think it is so.

The next upon the List is the Provost Marshal, *James Cosbey*, who is present.

The next is the Signalman, *John Castillio*, who is present.

The next upon the List are the four Officers belonging to the Fort of St. *Anne*, viz. *George Montcreeff*, Fort Major; *Giles Wakeman*, Adjutant; *Culmore Cockerel*, Surgeon; and *Daniel Cabroll*, Surgeon's Mate, who are absent; says,

This Fort is the Place where the Fortifications were designed to have been made; and had they been made in this Place, I will venture to say, 20,000 *Spaniards* could not have taken it: That was the Reason of there being a Staff proposed for the Fort, which is at present no more than a broken Windmill, and no House nor Cover for a Man to lie in; a Place where I put a Man to hoist a Flag when any Ship appears off the Island.

Q. Whether if the Persons belonging to this Fort had been upon the Island, they might not have been of Use in the other Fort?

A. They would have been as so many Supernumeraries; and a Place that is besieged cannot be the weaker for having a Supply of a Surgeon and a Surgeon's Mate.

Q. What does the Pay of those four Officers amount to?

A. I can't upon my Memory tell that directly; your Lordships may have it from the War Office.

Q. Whether

Q. Whether those Officers would have been obliged to assist in defending the other Fort, if it had been attack'd, and would have been under your Command?

A. I understand that every Establishment there is under my Command; and if the Place had been attack'd, they would have been as much obliged to defend it as they would Fort St. *Anne*.

The next upon the List are the Officers belonging to Fort St. *Philip*, *viz.* the Lieutenant Governor, Major General *Roger Flandafyd*, who is absent; says,

I don't know by whose Leave he is absent.

Q. How long has he been absent?

A. I believe he has not been there for a Number of Years.

The next upon the List is the Fort Major, *Peter Dumas*, who is absent; says, He came to *England* about six Weeks ago, and he never was from the Island since it was in the Possession of the *English* above three or four Months.

Q. Whether you know any particular Reason he had for coming over; or whether the above was given him for a Time; and whether he is not now upon his Return?

A. He had, as I understand, the King's Leave to come over, and is now under, or going to the Island again.

Q. Whether you know the Reason of his coming over?

A. I don't know the Reason, other than that he brought his Wife and Family into *England* to settle them here.

The next upon the List is the Adjutant, *Arthur Morris*; says,

He is there, and has been there many Years.

The next is the Surgeon, *James Scott*, who is absent; says,

This is the only Person in the List that I did give Leave to come to *England*, and ought to have returned before now.

The next is the Surgeon's Mate, *Jonathan Elder*, who is present.

Q. What is your Recruiting Fund in *Minorca*?

A. The Recruiting Fund is the same as that of the Troops in *England*, which is to warrant Men upon the List, which are suppos'd to be non-effected.

Q. Whether it's possible this Fund should be sufficient to complete the Regiments?

A. I have acquainted their Lordships with the Difficulty and Expence the Gentlemen are at in recruiting the Troops in that Island: An Officer in *England* can have a Man for 10*s.* which would cost a Captain in the Island 10 or 15*l.*

Q. How many Years have the Regiments in *Minorca* been there without being relieved?

A. There are two of the Regiments in the Island, that have been there five or six and twenty Years; there are two others that have been there 15 or 16 Years; my Regiment his Majesty was pleased to order over about four Year ago.

Q. Whether you are not convinced, that this is not Relieving of the Regiments; and whether the keeping the Regiments so long there has not been of infinite Detriment to the Service?

A. I think it has.

Q. Whether there have not been many melancholy Instances of the Despair of the Soldiers in those Regiments?

A. Yes, there have.

Q. Whether you had not Directions to write to the Island to acquaint them, that the Regiments

ments would be relieved, one Regiment every Year till the Whole were relieved; and whether you did not represent that that would be satisfactory?

A. I did write to the Commanding Officer of the Island that he might acquaint the Troops that his Majesty was determined to relieve one Regiment every Year, which, my Lords, I am satisfied would put a Stop to all such Accidents as have happen'd, and be satisfactory.

Q. What Time was that Letter wrote?

A. I wrote the Letter about nine Months ago.

Q. Whether any Regiments have gone thither since; and whether you know of any that is going to embark?

A. I have been told lately, that two Regiments will be sent, one to relieve a Regiment in *Gibraltar*, and another to relieve one at *Minorca*, but none are gone hitherto.

Q. You are desired to acquaint the House with some of the Instances of Despair in the Soldiers, and whether they have been frequent?

A. There have been a good many Instances of Soldiers upon that Island shooting off their Hands, and some of them shooting off their Feet, and some shooting themselves through the Head, of those that have been the longest there; by which your Lordships will observe they will incapacitate themselves from earning their Bread at Home, rather than continue there.

Q. How lately were you told that two Regiments were to be sent from hence, one to *Gibraltar*, and the other to *Minorca*?

A. I think it was about a Month ago that I heard so.

Q. Who was it that told you?

A. I heard it from the Lords of his Majesty's Council.

Q. Did you attend at the Committee of Court about three Weeks ago, touching Affairs relating to Lord *Mahon*?

A. I did.

Q. How long have those Accidents been frequent?

A. Those Accidents were frequent before I had the Honour to command in the Island; and several of them have happen'd since I have been here.

Q. Did not you represent this some Time before you left the Island in your Correspondence here?

A. Upon my Word I cannot be positive; but I think I did.

He was directed to withdraw.

Die Martis 28° *Januarii*, 1741.

The Order of the Day being read for resuming the adjourned Debate which arose Yesterday upon a Motion made in relation to the Officers who are absent from *Minorca*, and for the Attendance of Major General *Anstruther*;

Who attended accordingly, was called in, and being sworn, was shewed the List of the several Officers upon the Establishment of *Minorca*, whereby it appears what Number of them are absent; and the Nature of their respective Offices, and was desired to give the Reasons (as far as he knew) which occasion'd their Absence.

And having given a particular Account of this Matter, was examined further in general as to the State and Condition of the said Island, and the Number and Condition of the Forces there, and other Matters.

And being withdrawn,

The Proposition made Yesterday was again started, and a Question being put thereupon,

It was resolved in the Negative.

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A Mo-

A Motion was made, That it appearing to this House that the Governor and Lieutenant Governor of the Island of *Minorca*, and the Lieutenant Governor of Fort St. *Philip*, and several other Officers upon the Establishment there, are now absent from the said Island, to the manifest Prejudice of the public Service; Resolved, that an humble Address be presented to his Majesty, to give Directions, that the Officers upon the Establishment who are absent, as aforesaid, do forthwith repair to their respective Posts; and that his Majesty, out of his Royal Care of so important a Place, will be pleased to give the strictest Orders, that for the future, to prevent any such Prejudice to the publick Service, such a Number of the principal and other Officers as shall be sufficient to perform the Services belonging to the said Establishment, be constantly resident on the Place. The same was agreed to, and order'd to be presented to his Majesty by the Lords with white Staves.

A Negative being put upon the first Motion, the following Protest was enter'd.

Dissentient.

1st, Because we conceive, That as the Fact stated in the former Part of the Question, appear'd plainly from the Paper laid before this House by the proper Officer, and neither was nor could be controverted by any one Lord, the Censure contain'd in the latter Part of the Question was not only just, but as gentle as so evident a Neglect of so important a Place, at so critical a Time, could possibly allow. The principal, if not the only Argument made Use of by those Lords who opposed the Motion was, That the Censure was general, and pointed at no particular Persons, which we rather apprehend to be a Proof of the Justice and Moderation of that Censure, as it could then only light upon the Guilty whoever they were; and we are inclined to believe,

that

that had the Censure been applied to any particular Persons, the contrary Argument would have been urged, and the Injustice of a particular Censure, without Proofs, sounded high, tho' possibly, at the same Time, the necessary Means of getting at those Proofs might have been render'd difficult: That out of Nineteen Officers paid upon the Establishment of *Minorca*, Fourteen were absent, among whom were the Governor, the Deputy Governor, and the Governor of Fort St. *Philip*, was a Fact disputed by none, tho' the slightest Censure of it was oppos'd by the Majority of the House. We therefore hope, that Posterity, to whom we thus appeal, will not only approve of our Conduct in this Motion, but will likewise, from the ill Success of it, find Reasons to excuse our not attempting many others of the like Nature.

2dly, Because, when we consider the tender Apprehensions of the Administration for the Island of *Minorca*, in the Year 1740, when, upon Information received, that a few Troops were marching to the Coasts of *Catalonia*, and a few *Tartanes* assembled in the Port of *Barcelona*, Orders (possibly obscure from that Precipitation which the Emergency requir'd) were sent to our Admirals in the *Mediterranean*, to provide immediately for the Defence of that Island, even by going there with their whole Force, if necessary; by the Execution or Mistake of which Orders, the *Spanish* Squadron was suffer'd to sail from *Cadiz* to the *West-Indies*, to the imminent Danger of our Fleets and Possessions there; we cannot well account for that profound Security in which the Administration seem'd to be the last Year, with Regard to that valuable Possession, when an Embarkation of Fourteen or Fifteen Thousand Men, and above Two Hundred Transport Ships was publickly preparing at *Barcelona*, and consequently within Eight and forty Hours sail of *Minorca*,

norca, which Embarkation soon after were undisturb'd to *Italy*: But we fear this inconsistent Conduct may give too much Credit to Insinuations lately scatter'd in Publick, that the *British* Ministers were as secure that *Minorca* would not be attack'd by the *Spaniards*, as the *Spanish* Ministers were that their Embarkation would sail to *Italy* undisturb'd by our Squadrons in the *Mediterranean*.

3dly, Because it appears, that about the same Time that Major General *Anstruther* left that Island, by Leave from the Secretary at War, which was on the 15th of *February* last, Admiral *Haddock* informs the Secretary of State, in a Letter of the 10th of the same Month, that by the latest Letters from Mr. Consul *Birtles*, he mentions, "That a *Spanish* "Embarkation is actually intended; and tho' the "first Design was on a sudden dropp'd, the last In-"telligence declares the same to be renew'd again;" which Information, we conceive, was sufficient to have excited greater Apprehensions for the Danger of that Island, than seem to have been entertained, since no one Step appears to have been taken thereupon for its Defence, or any Leave of Absence recalled; but the whole Government was suffered to devolve to a Lieutenant Colonel of one of the Regiments there.

4thly, Because it appear'd by the Examination of Major General *Anstruther* at the Bar, that when he left *Minorca* about the 15th of *February* last, above 700 Men were wanting to complete the Regiments there, and near the same Proportion of Officers absent: That the private Soldiers were so uneasy at having been there so long, that many destroyed themselves from Despair, and many maimed themselves to get discharged. That should the Island be attacked, the Inhabitants would, in his Opinion, certainly join the *Spaniards*: That in his Opinion too, that Island was always in Danger when

our

our Enemies were superior in the *Mediterranean*, which has been for some Time, and is still the Case. All which Circumstances concur to prove the Danger, the Neglect, and the Justice of censuring such a Neglect at such a Time.

5thly, Because it was said in the Debate by those whose high Stations best enable them to know, "That a general Relaxation of Government, and "Abuses of this Nature, were the Vices of the "present Age." A melancholy Truth! which we conceive is so far from being an Argument for Impunity, that it evinces the Necessity, at least, of censuring such as we can attain to the Knowledge and Proofs of. And indeed we have but too much Reason to believe, that the several Abuses committed in the several Branches of the Government, unpunished at least, if not conniv'd at, have already produced Effects too sensibly felt by this Nation; which Abuses, from the Nature of Things, necessarily multiply themselves, and if not speedily check'd, must soon forge a Chain of reciprocal and criminal Dependency, too strong for even the Authority of this House to break, and too heavy for the Constitution to bear.

6thly, Because the Motion for an Address, offer'd in Lieu of this Question, in which the same Fact is stated in its full Extent, but without the least Censure annexed to it, is, in our Opinion, not only unprecedented, but inconsistent with the Honour and Dignity of this House, as it may seem calculated to screen the Guilt it avows; and as it may be thought to intimate future Impunity for publick Crimes, if balanced by private ministerial Merit. Artifice may elude Inquiries, or prevent Detection; Lenity may censure a Crime, yet spare the Criminal; but Mankind, we fear, may be at a Loss to account for what Motives so criminal a Neglect, fully stated, proved and admitted, could

escape

escape without Censure; or may ascribe it to such as would affect the Reputation, and consequently lessen the Authority of this House.

Sandwich,	*Dunk*,	*Halifax*,
Greenwich,	*Carlisle*,	*Shaftesbury*,
Northampton,	*Mansel*,	*Chesterfield*,
Leigh,	*Aylesbury*,	*Falmouth*,
Craven,	*Talbot*,	*Abingdon*,
Cobham,	*Ward*,	*Bridgewater*,
St. John,	*Oxford and Mortimer*,	*Exeter*,
Foley,		*Denbigh*,
Litchfield,	*Beaufort*,	*Ric. Lic. and Co.*
Haversham,	*Berkeley de Stratton*,	*Suffolk*,
Westmoreland,		*Thanet*,
Bathurst,	*Ric. Lincoln*,	*Clinton*,
Hereford,	*Gower*,	*Aylesford*,
Clifton,	*Macclesfield*,	*Bedford*.

Die Lunæ 20° *Martii*, 1742.

A Bill, which took its Rise from the Complaints of the Merchants, to *the House of Commons*, entitled, *A Bill for the better securing the Trade and Navigation of this Kingdom in Time of War*, was read. Which Bill was brought in that House on Account of the obstinate Behaviour of *Nicholas Paxton* and others, before the secret Committee.

Contents 47	37	And Debate being had thereupon, the Question was then put, whether the Bill should be committed?
Proxies 10		
Not Cont. 92	109	
Proxies 17		

It was resolv'd in the Negative,

Dissentient,

Macclesfield.

1st, Because the rejecting of this Bill, founded, as we conceive, upon Reason and Justice, warranted by Precedents, authorised by Necessity, and called for by the general Voice of the Nation, may appear a manifest Obstruction to publick Justice, in the

the present great and important Case; and a most certain Defeat of it for the future, in all Cases of the like Nature.

2*dly*, Because it is an uncontroverted Maxim of the Law of *England*, That the Publick has a Right to every Man's Evidence, and yet, by the same Law, no Man is obliged to accuse himself; and as the Accomplices of Guilt are frequently the only Witnesses of it, we conceive, that both Prudence and Justice point out this Method of Impunity to some, as absolutely necessary towards discovering the Guilt of others; and thereby dissolving those Confederacies, which, formed by common Guilt, can only subsist whilst they are cemented by common Danger. From these undeniable Principles we apprehend this Bill ought to have passed, in order to preserve the Rights of the Publick, and the Rights of Individuals.

3*dly*, Because this Bill is justified by many Bills of a much stronger Nature, in Cases of much less Consequence to the Publick, such as the Cases of Sir *Thomas Cooke*, the Masters in Chancery, Sir *Robert Sutton*, *Thompson*, and others; in some of which, the Persons indemnified, in order to give their Evidence, were, at the same Time, compelled, under severe Penalties, to give it. And as there is a Power not only of indemnifying, but rewarding, necessarily lodged in the Crown, in order to bring Criminals to Justice, by Evidence known to, and within the Reach of the Laws; so we apprehend, that in an Inquiry after Crimes, that may affect the Being of the Whole, the People have a Right to the Exertion of that Power with which the Legislature is undoubtedly vested, to come at such Evidence as may make that Enquiry effectual to their future Security.

4*thly*, Because the Legislature has exercised this Power in many Instances, relating to particular

Branches

Branches of the Revenue, in order to prevent Frauds; the Persons concerned in such Frauds being not only indemnified, but rewarded also; and for the private Utility of one Company, the Legislature, by the 9th of King *George* the First, after forbidding any Person to be concerned in promoting an *East India* Company in the *Austrian Netherlands*; gives to our *East India* Company a Power to prosecute, by Bill in Chancery, or Court of Exchequer, any Person whom they shall suspect, obliging such Person to make Discovery upon Oath, though such Discovery subjects him to a Forfeiture. As also for the better Discovery of Felonies the Legislature has thought fit by an Act, of the 5th of Queen *Anne*, to pardon any Person not only of the Felony discovered; but of all other Felonies he has ever been guilty of, upon his making a Discovery of two Persons who shall thereupon be convicted of any Burglary or Felony, and that Discoverer is also entitled to a Reward.

5thly, Because the rejecting this Bill may prove a dangerous Precedent of fatal Consequence to this Constitution, since, whenever this Nation shall be visited by a wicked Minister, those who shall have served him in defrauding and oppressing the Publick, and in corrupting Individuals, will be furnished with an Excuse for refusing their Evidence, their Danger will produce his Security, and he may enjoy with Safety the Plunder of his Country; nay, we even apprehend, that the rejecting of this Bill may be misunderstood by those who can make any Discovery, as if this House designed to discourage any Evidence whatsoever, that could affect the Person whose Conduct the Secret Committee was appointed, by *the House of Commons*, to inquire into. A Minister may be removed from his Place, and not from his Power; he may be removed from both, and not from the Favour of his Prince; nay,

he

he may be deprived of all three, and yet his Successor may think his Interest and future Safety, and his Prince may imagine his Authority, concern'd in protecting him from either Punishment or Enquiry. In any of which Cases all written Evidence, all Office Proofs, will be secreted or refused: and if verbal Evidence be render'd impracticable, too (which the rejecting of this Bill will furnish a Precedent for) we conceive we might as well have passed an Act of Indemnity to all future Ministers.

6thly, Because we can by no Means agree to the Argument principally urged against this Bill, that there were not Proofs of Guilt against this Person sufficient to justify the passing it; whereas, in our humble Opinions, the Voice of the Nation, the Sense of the other House, and the lamentable Situation of this Kingdom, both at Home and Abroad, create Suspicions which not only justify, but even call aloud for Inquiry; which Inquiry must necessarily prove ineffectual, unless the proper Methods are taken to support it, of which we apprehend this Bill to be one, and a Proceeding so just, that no innocent Man would desire to avoid it, and no guilty one ought to escape it: Moreover the Reasons assigned by the Persons whose Behaviour gave Rise to this Bill, for refusing their Evidence, is a sufficient Implication that it would affect the Earl of *Orford*, since they admit it would affect themselves.

7thly, Because we conceive that the rejecting this Bill may create great Disaffection in the Nation, to the Diminution of the Credit, and consequently of the Authority of this House, when the People find themselves disappointed in their just Expectations of having a strict Inquiry made into the Conduct of the Earl of *Orford*, which they have so long called for in vain, and hoped they had at last obtained. Groaning under the undiminished Load of National Debts and Taxes, notwithstanding a long

long Peace; trembling under the Terrors of multiplying Penal Laws; deploring their sacrificed Honour, and their neglected Interests; the Balance of *Europe* overturned Abroad, and the Constitution endangered at Home; they call for Inquiry; they seek for Justice; they hope for Redress: The other House has taken the proper Steps to answer these Expectations; the Inquiry begun there could only have been rendered effectual in one material Point by this Bill; which being rejected by this House, from whence they expect Justice and Redress, we fear their blasted Hopes, which, for a Time, may seem sunk into a slavish Despondency, may at last break out into Disorders, more easy, possibly, to foresee than to remedy.

Denbigh,	*Chesterfield*,	*Oxford and Mortimer*,
Bathurst,	*Ward*,	*Thanet*,
Foley,	*Aylesford*,	*Westmoreland*,
Abingdon,	*Berkshire*,	*Gower*,
Northampton,	*Boyle*,	*Coventry*,
Rockingham,	*Greenwich*,	*R. Lincoln*,
Dunk-Halifax,	*Craven*,	*Falmouth*,
Bedford,	*Cobham*,	*Carlisle*,
Aylesbury,	*Sandwich*,	*Litchfield*,
Beaufort,	*Shaftesbury*,	*Leigh*.
St. John,	*Haversham*,	

Die Mercurii 10 *Februarii*, 1742-3.

The Order of the Day being read, for taking into Consideration the several Estimates of the Expence of the Forces in the Pay of *Great Britain*.

Contents 90 And after long Debate being had
Not Cont. 35 thereupon,

It was resolved in the Negative.

Upon which the following Protest was entered,

Dissentient

Gower, C. P. S.
Cobham.

1st, Because we apprehend, That the assembling an Army in *Flanders* last Year, without the Concurrence of the States General, was a Measure not only unwarranted by any Advice or Consent of Parliament, but directly repugnant to the declared Sense of *the House of Commons* in their Resolution of the 23d of *March* last; it not appearing to us, that any one Power, engaged by Treaty, or bound by Interest to support the Queen of *Hungary*, except *England* alone, had come in to give her any Assistance, or to co-operate with us in any Plan to which an Army in *Flanders* could be supposed to conduce; and therefore the Support then promised by that House to his Majesty, upon an express conditional Supposition of being joined by such other Powers, is so far from authorising a Measure entered upon in Circumstances totally different, that it plainly points out the Opinion of Parliament against such an Undertaking.

2dly, Because the taking 16,000 *Hanoverians* into the Service of *Great Britain*, to act in Conjunction with the *English* Forces assembled in *Flanders*, without consulting the Parliament upon an Affair of such an important and delicate Nature (altho' it was foreseen and pointed out by the King to both Houses of Parliament at the Close of the last Session, and is expresly referred to in his Majesty's Speech at the Opening of this) seems to us highly derogatory to the Rights, Honour and Dignity of the great Council of the Nation, and a very dangerous Precedent to future Times.

3dly, Because the restoring the Ballance of Power in *Europe*, by raising the House of *Austria* to its former Condition of Influence, Dominion and Strength, is an Object quite unattainable by the Arms of *Great Britain* alone: And for the attaining of which, no other Power has joined, or is likely

to

to join with us in any offensive Engagements, either against the Emperor, or against *France*.

4thly, Because such Assistance to the Queen of *Hungary*, as the Situation of her Affairs, and that of *Europe*, as well as the particular Interest and Policy of this Island require, would have been more properly given in Money, with much less Expence and Danger to us, with much more Effect and Advantage to our Ally. The 38,000 Men, now said to be paid for her Service, costs this Nation 1,400,000 l. one Half of which Sum would have enabled her to maintain a greater Number of Men, capable of acting wherever her Affairs might require; so that above 702,000 l. seems to be wantonly lavish'd away upon this Occasion, besides the Lives of many of the Subjects of *Great Britain*.

5thly, Because we apprehend, that the Troops of the Elector of *Hanover* cannot be employed to act in *Germany* against the Head of the Empire, whose Title and Cause have been avowed by the whole Body, in granting him an Aid of Fifty *Roman* Months for his Support in this very War, without incurring the Risque of such Consequences upon any ill Success, as neither consists with the Safety of *Hanover*, nor with the Prudence of *England*; in which Apprehension we are strongly confirm'd by those Troops not having acted in Opposition to Marshal *Maillebois*, at a Juncture of Time when such an Assistance, given to the Queen of *Hungary*, might have been decisive; and for losing which Opportunity, no other natural or probable Reason appears.

6thly, Because the assembling an Army in *Flanders*, not then attacked by the *French*, nor, as it appears to us, in any Danger of being attacked, could be of no Use to the Power we designed to assist, nor give any Hindrance or Terror to *France*, with Regard to the Designs she was then pursuing;

 but

ſure could be exhauſted, its Honour expoſed, and its Safety riſqued, for no other End than to advance that foreign Intereſt, and make ſuch a Compliance the Price of Favour and Power: We are convinced it would be attended with more Alienation of the Hearts of the People from his Majeſty's Perſon and Family, than almoſt any other Miſmanagement could ever produce. We therefore think it the higheſt Duty we owe to our King and Country, to enter our timely Proteſt againſt the Approach of ſo fatal a Miſchief, to deprecate the pernicious Effects of it in the moſt ſolemn Manner we can, and to expreſs our earneſt Deſire, that this Motion had been complied with, in order to ſtop an Evil in its Beginnings, by the prudent and ſalutary Intervention of the Houſe of Parliament, which by the increaſing Corruption of Miniſters, may be extended ſo far, as either to throw this Nation into the greateſt Diſorder, or reduce it to a State of the meaneſt Dependency.

Cheſterfield,	*Rockingham*,	*Weſtmoreland*,
Beaufort,	*Shaftesbury*,	*St. John*,
Montjoy,	*Bedford*,	*Stanhope*,
Bridgewater,	*Sandwich*,	*Aylesbury*,
Haverſham,	*Hereford*,	*Talbot*,
Coventry,	*Oxford and Mortimer*,	*Northampton*,
Aylesford,	*Litchfield*,	*Denbigh*,
Craven,	*Abingdon*,	*Foley*.

On a Motion to addreſs his Majeſty, that his Majeſty will be moſt graciouſly pleaſed to give Orders, that the Sixteen Thouſand *Hanoverians*, now in the Pay of *Great Britain*, be no longer continued in the Service of this Nation, after the 25th of this Inſtant *December*; thereby to put a Stop to the Jealouſies and Heart-burnings of his Majeſty's faithful Subjects at Home, and his Majeſty's *British* Forces Abroad.

Die

Die Veneris 9° *Decembris*, 1743.

The House was moved, that an humble Address be presented to his Majesty, that his Majesty will most graciously be pleased to give Orders, that the Sixteen Thousand *Hanoverians*, now in the Pay of *Great Britain*, be no longer continued in the Service of this Nation, after the 25th of this Instant *December*, thereby to put a Stop to the Jealousies and Heart-burnings among his Majesty's faithful Subjects at Home, and his *British* Forces Abroad.

Which being objected to, and a long Debate thereupon, the Question was put on the said Motion.

Contents 36 Not Cont. 71 — And it was resolved in the Negative.

Dissentient

1*st*, Because we conceive, that the Reasons assigned in the Question, not only justified, but called for that Question, as a proper and necessary Exercise of the inherent Rights of this House, to advise the Crown; and we are convinced, that such Jealousies and Animosities have arisen, and will continue between the Troops of *Great Britain* and those of *Hanover*, that they can no longer act together, without evident Danger of the most pernicious and fatal Consequences.

2*dly*, Because this our Conviction is founded upon the most publick and universal Notoriety, first transmitted from the Army Abroad, then confirmed without Doors, by the unanimous and concurrent Accounts of all the Officers that are returned from them; and now uncontradicted by any of those noble Lords, who had the Honour of serving the last Campaign, and who were appealed to for the Truth of this Proposition, while the Question was under our Consideration: A Silence!

which, we apprehend, amounts to a Demonstration of the Truth of the Facts alledged.

3dly, Because an Army divided against itself, in such a Manner as ours will certainly be, if the Sixteen Thousand *Hanoverians* are still to continue a Part of it, can give no Strength to whatever Allies we have, no Terror to our Enemies, but must greatly obstruct, and probably defeat the Success of any Operation or Service in which it can be employed.

4thly, Because the Incompatibility of the *British* and *Hanoverian* Troops being known to all *Europe*, nothing can be a greater Inducement to the Queen of *Hungary* and the King of *Sardinia*, to quit our Alliance, and make a separate Peace for themselves, than if they should find, that, instead of a real and effectual Support, we are resolved to give the Name of an Army only; which, from the above mentioned Reasons, cannot co-operate in any Plan for their Service, or the Benefit of the common Cause.

5thly, Because we apprehend, that were it necessary, there would be no Difficulty in replacing the *Hanover* Troops, with Sixteen Thousand others, at least as good, and as cheap, and not liable to the same, or any other Objections from other States, who would be very willing to treat with us about such a Bargain. Nay, we conceive, that this Number might, without any Danger, be, in a great Degree, supplied by our National Troops now in *Great Britain*, and still leave more for the Defence of the Kingdom at Home, than were kept here at any Time during the last War. And we can discover no good Reason, in our present burthened and exhausted Condition, for keeping a Number of National Troops useless at Home, and paying at the same Time so considerable a Number of *useless Mercenaries* Abroad.

6thly, Be-

6*thly*, Because the Willingness of the States General of the United Provinces, or any other Power in *Europe*, to enter into a closer Conjunction with us, at this critical Time, must chiefly depend upon the Idea they shall conceive of the State of this Nation at Home, especially with Regard to the greater or lesser Degree of Union and Harmony, which shall appear to subsist between his Majesty and his People in these his Royal Dominions. And it is known all over *Europe*, how much Discontent and Dissatisfaction the taking these Sixteen Thousand *Hanover* Troops into the Pay of *Great Britain*, together with the many unhappy and mortifying Circumstances that have attended that Measure, has universally raised in this Kingdom; and how much Reason there is to apprehend an Increase of that Dissatisfaction, if it should be a determined Measure of Government, to continue so odious a Burden upon the Nation, not only without any Advantage, but with the most visible Danger to the Service Abroad.

7*thly*, Because we conceive it to be as much the Duty, as it is the Right of the Peers of this Realm, who are hereditary Counsellors to the King, and Mediators between the Crown and the People, to interpose their timely Advice against such Measures, as are calculated, in our Opinions, for the private Views of particular People only, have a manifest Tendency to alienate the Love of the Nation in general from this Royal Family, which we will always support with true *English* Hearts, and with such Counsels, as we do in our Consciences think the most conducive to their Glory, and to maintain and preserve the Honour and Dignity of that *British* Crown, to which *alone* we owe our Allegiance.

8*thly*, Because we know there are Partialities almost inseparable from human Nature, and blameless

in

in themselves, when acting within their proper Bounds, which yet must have a most fatal Influence, if encouraged to mix themselves with the Affairs of this Nation, either in the Council, or in the Camp; and we do, from our Souls, scorn and abominate that most abject and criminal Adulation, which either gives Way to, or inflames such Partialities, in Prejudice to the National Honour and Interest of our Country: We therefore thought it necessary, to enter these our Reasons against the further Continuance of these Mercenaries, which for one Campaign only, have already cost this Nation near Seventy Thousand Pounds, and which appear to us to have been, in many Instances, disobedient to *British* Orders, and utterly incompatible with *British* Troops: That, as our Votes have (we hope) proved us to the present Age, our Names in the Books may transmit us to Posterity ENGLISHMEN.

Marlborough,	*Sandwich*,	*Hereford*,
Talbot,	*Bedford*,	*Litchfield*,
Chesterfield,	*Huntingdon*,	*Westmoreland*,
Bridgewater,	*Aylesbury and Elgin*,	*Northampton*,
Coventry,	*Haversham*,	*Foley*,
Shaftesbury,	*Thanet*,	*Gower*,
Abingdon,	*Masham*,	*Mansel*,
Denbigh,	*Rockingham*,	*Beaufort*.
Stanhope,		

On a Motion, That it is the Opinion of this House, That the continuing the Sixteen Thousand *Hanoverians* in the Pay of *Great Britain* is prejudicial to the true Interest of his Majesty, useless to the common Cause, and dangerous to the Welfare and Tranquility of this Nation.

Die Martis 31° Januarii, 1743.

The Order of the Day being read, for taking into further Consideration the Estimate of the Charge of the Troops of *Hanover* in the Pay of

Great

Great Britain, from the 25th of *December*, 1743, to the 25th of *December*, 1744.

It was moved to resolve, That it is the Opinion of this House, that the continuing Sixteen Thousand *Hanoverians* in the Pay of *Great Britain*, is prejudicial to the true Interest of his Majesty, useless to the common Cause, and dangerous to the Welfare and Tranquility of this Nation.

And the same being objected to, after a long Debate thereupon, the Question was put upon the said Motion.

Contents 41 Not Cont. 86 And it was resolved in the Negative.

Dissentient

1*st*, Because we conceive, that the Demand made in the Estimates, for the Continuance of the Sixteen Thousand *Hanoverians* in the Pay of *Great Britain* for the ensuing Year, rendered the Interposition of this House against so fatal a Measure the more necessary, inasmuch as it seemed now to be the only Means left to prevent it.

2*dly*, Because we apprehend, that every national Purpose, pretended to be answered by these *Hanoverians*, may be more effectually served by an equal Number of Troops, supposing such a Number to be necessary, free from the same Objections, either of foreign Mercenaries, who will thereby be prevented from engaging with our Enemies, (of which the *Hanoverians*, when unpaid by us, cannot, we assure ourselves, be suspected) or, at least, (which is evidently practicable, even at this Time) partly of Mercenaries, and partly out of the great and extraordinary Establishment of national Troops now in this Kingdom.

3*dly*, Because it appears to us, that these *Hanoverians*, though in the *Pay*, can hardly be said to have been in the *Service* of this Nation; some refused to form in the first Line at the Battle of *Det-*

tingen,

tingen, and retired to the second; others refus'd to obey the Orders of the *British* General, and march in the Pursuit of the Enemy after the Battle; and the greatest Number of them, who, together with some of the *British* Guards, composed what was called the Rear Guard, under the Command of a *Hanoverian* Lieutenant-General, took a different Route in the March from the rest of the Army from *Aschaffenburg*; and such a one as not only rendered them wholly useless to the Army, when the *French* attacked us in Front, but would have rendered them equally useless, if the *French* from *Aschaffenburg* (where we left the Passage open to them) had attacked us in the Rear, in which it was pretended that these Troops were left, as in the Post of Honour: Nay, not contented to avoid being of Use, either in the Front or in the Rear, but determined to be of Use no where, they halted as soon as they came within Sight and Reach of the Battle, though pressed by the *British* Officer, and invited by the Ardour of the *British* Soldiers to share the Glory, and complete, as they might have done, the Victory of the Day. These Facts (together with many others which we omit) asserted in the Debate in Presence of many Lords of this House, who served in the last Campaign, denied by none of them, and confirmed in general by a noble Duke of the highest Rank and Character, prove (as we conceive) these Troops to be useless, at least if Action be intended; and we will not represent, even to ourselves, what Reasons there can be for demanding them, if Action be not intended.

4*thly*, Because, if, as it was insinuated in the Debate, other Mercenaries could not be relied on, as belonging to Princes of the Empire, inclined to or engaged with our Enemies, these *Hanoverians* would, as we conceive in Consequence, be useless to the common Cause; since it would be in the Power of those

those very Princes, by only marching their Troops into proper Places, to recal these Mercenaries from us, and confine them to the Defence of their own Electorate, or *disarm them at least*, by a *second Neutrality*.

5*thly*, Because it has not been pretended, that the Administration has so much as endeavoured to obtain any other foreign Troops whatsoever, notwithstanding the long Notoriety of the universal and deeply-rooted Dissatisfaction of the Nation at the present Measure. A Neglect so unaccountable and surprising to us, that we fear the Nation will either suspect that we are to have no other Troops, than believe no others are to be had.

6*thly*, Because we conceive, that the future Co-operation of our national Troops with these Mercenaries has been rendered impracticable, and even their Meeting dangerous; we think it, therefore, indispensably incumbent upon us, to remove the Object that occasioned the many Instances of Partiality, by which the *Hanoverians* were unhappily distinguished, and our brave Fellow-Subjects, the *British* Forces, undeservedly discouraged. The constant Preference in Quarters, Forage, *&c.* we wish no Occasion had been given to remember; but we cannot pass over in Silence the *Hanoverian* Guards having for some Days done Duty upon his Majesty at *Aschaffenburg*, which we look upon as the highest Dishonour to his Majesty and this Nation, and are therefore astonished to observe an unusual, and, to every other Purpose, useless Proportion of *Hanover* Guards continued upon the Estimate.

7*thly*, Because we apprehend, that the Argument urged in Opposition to this Question; namely, that the withdrawing these Sixteen Thousand *obnoxious Mercenaries*, would be weakening our Army in the next Campaign, alarm our Allies, and encourage our Enemies, is fully obviated by the Methods we have

have mentioned above; of replacing them; some, if not all of which, (notwithstanding the, to us, unaccountable Negligence of the Administration) are still undeniably practicable: Nor can we conceive, in any Case, that the removing the Causes of Discord and Division tends to the weakening of that Body from whence they are remov'd; and we are of Opinion, that our Allies would not (whatever our Enemies might) regret the Loss of these Troops the next Year, which, by Experience, they found so useless the last.

8thly, Because we apprehend, that the most fatal Consequences must ensue, should this Nation be once possessed with an Opinion, that the Discouragements and Mortifications which our Fellow Subjects of the Army have received Abroad, were deriv'd from any Distrust or Dislike of the *British* Nation; we are far from entertaining any such Opinion, though some Degree of foreign Partiality may indeed have given Occasion to these Discouragements and Mortifications; though we can whole ascribing them likewise to some abject Flattery, and criminal Misrepresentation, which this Partiality, blameless in itself, has unhappily given Occasion to; and by which, in its Turn, it has been fomented. But how groundless soever such an Opinion may be, it may still prevail, and the Appearances we lament, may produce the Effects we dread. The Motives to that Concern, that have been expressed in this House, and the loud Dissatisfaction that has been expressed every-where else, are in themselves of great Importance, and such as would deserve, even if they stood alone, the serious Consideration and seasonable Interposition of this House. But we confess, that they appear to us still more important, when we consider them relatively to Things of the same Nature, less apparent, indeed, but equally real, and more detrimental, perhaps, if

if not more dishonourable to this Nation. For the more dishonourable they may be thought, if a continued Principle of Conduct, whereby the Interests of one Country are carried on in Subordination to those of another, constitute the true and mortifying Definition of a Province. We will not here call to Memory any former Measures of this Kind, nor recapitulate all the Instances that might be given, wherein the Blood and Treasure of this Nation have been lavishly employed, when no one *British* Interest, and, as we conceive, some *foreign Interest alone*, was concern'd. Some of these Instance were touch'd in the Debate, most of them are well known, and all of them are at this Time, by the Course of Events, manifested to publick View. The former were long hid and disguised under political Veils, the present could not by their Nature be so; they are such as strike every one equally, from the highest Officer to the common Soldier, and carry along with them not only their own Weight, but the Weight of all those that preceded them: They are such, therefore, in our Opinions, as must affect, in the most fatal Manner, both the Peace of his Majesty and his Royal Family, and the common Cause, in which we are now and may hereafter be engag'd. The present Royal Family was justly called to the Throne of *Great Britain*, in order to secure to us our civil and religious Rights, and to remove every false and foreign Bias from our Administration: The Happiness and Security therefore, of both King and People, consist in the inseparable Union of all these Interests, with the Interest of the Crown, in a just Confidence, that these National Views were those of the present Royal Family. This Nation has done every Thing that could engage them to adhere to them; and has given to his late and present Majesty far greater Sums than ever were given, in similar

ſimilar Circumſtances, to any of their Royal Predeceſſors. Whoever goes about to ſever the Intereſts of the Crown, from any national Intereſts, is an Enemy to both; and every Meaſure that does do, tends to deſtroy both. It is to guard againſt ſuch Attempts, that our Zeal for our King and Country exerts itſelf on this great Occaſion, as our moſt earneſt Deſire is, that his Majeſty's Throne ſhould be eſtabliſhed in the Hearts of his People; and as we are ſtruck with Horror at every Object that can alienate his Affections from them, or theirs from him. How much theſe unfortunate Circumſtances have already weakened the natural Influence of *Great Britain* in the common Cauſe of *Europe*, is but too apparent in Fact, and could not be otherwiſe, in the Nature of Things. *Great Britain* is a powerful Kingdom, and whenever ſhe has acted in her true Character, and aimed at that great and noble View alone of maintaining a Ballance between the Powers of *Europe*, for the common Intereſt of all, the Effects have been anſwerable to the Cauſe, and her Influence in *Germany*, ſaved by her Arms, and ſupported by her Treaſures in the laſt Wars, was, as it ought to be, and as it has been every-where elſe, ſuperior. But ſhould it ever appear, that an inferior *German* Principality is *really*, and *Great Britain* only *nominally*, the Director and Actor, ſuch a Change in the Cauſe muſt neceſſarily produce a deplorable Difference in the Effect; and *Hanover*, that can neither give Strength nor Conſideration to *Great Britain*, may thus diminiſh the one, and take the other wholly away.

Weſtmoreland,	*Oxford and Mortimer*,	*Bridgewater*,
Sandwich,	*Foley*,	*Cheſterfield*,
Montjoy,	*Huntingdon*,	*Litchfield*,
Dunk Hallifax,	*Ancaſter*, G. C.	*Hervey*,
Gower,	*Talbot*,	*Strafford*,
Boyle,	*Thanet*,	*Stamford*,

Shafteſ-

Shaftesbury, *Aylesbury*, *Abingdon*,
Coventry, *Bedford*, *Beaufort*.
Denbigh,

Die Jovis, 27o *Aprilis*, 1744.

The Order being read for the House to be put into a Committee, upon the Bill, entitled, *An Act to make it High Treason, to hold Correspondence with the Sons of the Pretender to his Majesty's Crown.*

Ordered, That it be an Instruction to the said Committee, that they do receive a Clause for attainting any of the Pretender's Sons of High Treason, in case they shall land, or attempt to land in *Great Britain*, or any other of the Dominions belonging to the Crown of *Great Britain*, or be found on board any Ship or Vessel, with Intent to land there.

Then the House was moved, That the Tenth Section of an Act, made in the Seventh Year of her late Majesty Queen *Anne*, intitled, *An Act for improving the Union of the two Kingdoms, relating to Forfeitures*, might be read.

The same was read accordingly, and was to this Effect.

Proviso, "That after the Decease of the Pretender, and at the End of Three Years after the Succession to the Crown on the Demise of the Queen shall take Effect, no Attainder for Treason shall extend to the disinheriting of any Heir, nor prejudice the Right or Title of any Person, other than the Offender during his natural Life only."

And it being also moved, That it be an Instruction to the said Committee, that they do receive a Clause or Clauses to suspend and postpone the Operation and Effect of the said Tenth Section of the said Act, till after the Death of the Sons of the Pretender.

The ſame was objected to, and after a long Debate thereupon, the Queſtion was put, Whether ſuch an Inſtruction ſhall be given to the Committee?

It was reſolved in the Affirmative.

Diſſentient

1*ſt*, Becauſe this Addition to the Bill enacts the Continuation of a Puniſhment, which, tho' it may have prevailed at Times, in this and other Countries, we conceive it to be directly contrary to the firſt Principles of natural Juſtice, it being an unconteſted Maxim, that the Innocent ought not to ſuffer for the Sake of the Guilty, where, by the Nature of the Thing, it is poſſible to prevent it.

2*dly*, Becauſe involving the Innocent in the Puniſhment of the Guilty, is wholly inconſiſtent with that Spirit of Juſtice and Lenity that diſtinguiſhes our Law; and which ſays, *It is better, that ten guilty Perſons ſhould eſcape, than that one innocent one ſhould ſuffer.*

3*dly*, Becauſe we conceive, that the poſtponing the Operation of that Clauſe, in Act 7. of Queen *Anne*, till the Death of the Pretender's two Sons, is contrary to the plain Intention of that very Act, which appears throughout to have been an Act of Lenity and Mitigation; or to have been confin'd to the Life of the Pretender himſelf, or Three Years after the Succeſſion of the preſent Royal Family ſhould take Place, the Duration of thoſe cruel Penalties, of Forfeiture of the Eſtates, and Corruption of the Blood of innocent Perſons, as the utmoſt Term it was proper or juſt to allow them; and we apprehend, that the Pretender's marrying and having Children, was at that Time too probable and obvious an Event, not to have ſuggeſted this Proviſion, had it been thought either juſt, or neceſſary.

4*thly*,

4thly, Becauſe we are far from being convinced, that the Terror of theſe Penalties will ſo often prevent Guilt, as the Execution of them will oppreſs Innocence; and we do not conceive, that thoſe whom neither the innate Principle of Self-preſervation, nor the Horror inſeparable from Guilt can reſtrain, will be check'd by the tender Sentiments of parental Affection.

5thly, Becauſe we conceive, that no preſent Danger whatever can be urg'd as an Argument for this Clauſe, whoſe Operation does not commence till after the Death of the Pretender, who is now but Fifty-ſix Years old; and we can ſee no good Reaſon for anticipating a future and remote Danger (ſuppoſing that ſuch a Danger could ever exiſt) in order to enact at preſent the longer Continuation of ſo dreadful a penal Law.

6thly, Becauſe we conceive the Continuation is, in Effect, perpetuating this ſevere Law, ſince whatever Reaſons can be urg'd for it during the Lives of the Pretender's two Sons, will be equally made Uſe of for continuing it, as long as he or they ſhall have any Poſterity ſubſiſting.

7thly, Becauſe we conceive, That as the Clauſe can have no immediate Operation, the enacting it at preſent may ſeem rather to be an Inſinuation of preſent Diſaffection, than any Security againſt it; which Inſinuation, we apprehend, would be highly unjuſt and unbecoming, after the unanimous Zeal and Loyalty which the whole Nation has ſo lately given Proofs of for his Majeſty's Perſon and Government, and with which his Majeſty has ſo lately from the Throne declared himſelf ſatisfied. Theſe Reaſons have induced us to tranſmit to Poſterity our Diſſent to a Clauſe, by which they may be ſo ſeverely affected: We reflect with Concern upon the heavy Burthen of Debts and Taxes with which,

we fear, we ſhall leave them loaded; and we deſire that they may know, that we endeavour'd, at leaſt, to ſecure their Innocence from the Rigour of thoſe Laws to which they may hereafter be expoſed and ſacrificed.

Denbigh,	*Beaufort*,	*Cheſterfield*,
Oxford and Mortimer,	*Ward*,	*Bridgewater*,
Rockingham,	*Hervey*,	*Ayleſbury*,
Macclesfield,	*Litchfield*,	*Talbot*,
Foley,	*Warrington*,	*Coventry*.
Weſtmoreland,		

Bedford, } for all the above Reaſons except the *4th*.
Thanet, }

Die Veneris, 20 *Maii*, 1746.

The Order of the Day being read, for taking into Conſideration the ſeveral Papers preſented to this Houſe the 28th of *April* laſt, purſuant to their Lordſhips Addreſs to his Majeſty of the 22d of the ſame Month.

The ſaid Papers were alſo read.

Then it was mov'd to reſolve, That an humble Addreſs be preſented to his Majeſty, moſt humbly to repreſent to his Majeſty, as the Opinion and Advice of this Houſe, that carrying on the War in *Flanders*, at ſo vaſt a Diſproportion of Expence to this Nation, by forming an Army on the Continent paid by this Nation, while the States of the *United Provinces*, notwithſtanding the unaccountable Loſs of the greateſt Part of their Barrier, and notwithſtanding the very great Efforts which this Nation has made, have not only avoided declaring War againſt *France*, purſuant to Treaties, but are actually negociating for themſelves at the Court of *France*, is a Meaſure tending more to exhauſt a Nation, long and grievouſly burthen'd with Debts and Taxes, and to deſtroy the publick Credit, than

to

to weaken the Power of the common Enemy, which can beſt be effected by this Nation, where itſelf is weaken'd leaſt by a vigorous Exertion of our Naval Strength, and by enabling (as far as the Circumſtances of the Nation will permit) thoſe Powers upon the Continent who are more nearly intereſted in its Defence, to imitate the magnanimous Conduct of his Majeſty's good Ally the King of *Sardinia*, in carrying on the War as Principals in Defence of their own neareſt Concerns, and to maintain the Liberty and Independence of *Europe* againſt the ambitious Views and Attempts of *France*.

Which being objected to, and long Debate thereupon, the Queſtion was put upon the ſaid Motion?

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And it was reſolved in the Negative.

Diſſentient

1*ſt*, Becauſe it appears to us to be a Meaſure repugnant to the real and fundamental Intereſts of this Iſland to engage *Great Britain* as a Principal; and, in Effect, as the only Principal in a Land War in the *Netherlands*; the Conſequences of which are not only the Increaſe of Taxes, and of Debts at Home, but ſuch immenſe Exportations of Specie Abroad, as this Country cannot long, without Ruin, ſuſtain.

2*dly*, Becauſe we have experienced, and feel the Miſchiefs ariſing to this Nation from the undue Influence of foreign Intereſts upon the Continent, whereby we have been unneceſſarily embroiled in endleſs Jealouſies and Conteſts, and engaged in impracticable Treaties, and fruitleſs Subſidies, until after Intervals (hardly to be diſtinguiſh'd) of Peace without Oeconomy, and War without Effect, ſcarce any Trace remains of all the Efforts which this Nation has made upon the Continent, except that of a

Debt of more than Sixty Millions, exhausting the landed, distressing the trading Interest, creating new Powers, an Influence dangerous to the Constitution, sapping the Credit, and preying upon the very Vitals of our Country.

3dly, Because the Means for carrying on the War have appeared, and still appear to us, not only burthensome and grievous to the Nation, but insufficient to the national End (which, in our Opinion, ought to be the Re-establishment of Peace) and the Conduct of the War throughout the several Changes of Administration at Home, seems to us to have been unaccountable from the unavailing Victory of *Dettingen*, to the Slaughter of our gallant Countrymen at *Fontenoy*.

4thly, Because we have still less Reason for concurring in this Measure, when we reflect upon the Conduct of our Allies, *Italy* having been well nigh lost, by the Inattention of the Court of *Vienna*, and the Barrier in the *Netherlands* having been unaccountably given up by a Conduct of the *Dutch*, for which we want a Name, as we want Reasons for the ineffectual and contemptuous Succour which they sent in our domestick Distress; and Part of which (even such as it was) they withdrew, when the Danger appeared greatest.

5thly, Because after those Ministers, who first engaged us in this Measure, had declared the Concurrence of the *Dutch* essential to its Success; and, after a new-form'd Administration, had so explicitly declar'd that Concurrence to be the necessary Condition of continuing that Measure, after not only the Conduct, but the very Words of the *Dutch* (as contained in the Memorial which has been laid before us) manifest their Disability, or their Disinclination to any cordial or effectual Concurrence: And after it is become notorious, that at this very Time

Time they are treating for themselves at the Court of *France*, (if we may not rather infer from their Conduct, that they have already secur'd to themselves that Protection which their Ancestors disdain'd.) After all these Considerations, we hold it inexcuseable to concur in charging our poor and exhausted Country with new and immense Expences, which not only common Sense, but Experience, has pointed out to be, in this Conjuncture, ineffectual. A Conjuncture in which even they, who advise his Majesty, did not flatter us with much Hope of Success.

6thly, Because the prodigious Expences which this Nation sustains, in Support of this Measure, for the Hire of foreign Mercenaries, bears no Proportion between us and our Allies, either with Regard to their and our Interests to Stipulations observed in former Wars, or to our present Abilities, and must inevitably be (as we apprehend) a growing Expence, if the present Measures are pursued.

7thly, Because we have seen Part of the *British* Forces left useless Abroad, at a Time when an additional military Strength was thought wanting for our domestick Defence; and that Want supply'd by foreign Mercenaries, which alarms us greatly, from the Reflections we cannot avoid making on the fatal Consequences which may be produced to this Country, if a Prerogative shall be ever established for bringing over into this Country foreign Mercenaries in *British* Pay, even during the Sitting of Parliament, and without previously consulting that Parliament in a Matter so new, and so essential to the Honour, and to the Safety of the Nation. This alarms us the more, when we see the Troops of *Hanover*, which had been effectually secreted from the last Year's Estimates (tho' paid by this Nation then) now taken avowedly again into *British* Pay;

for which ſecond Variation we are not able to aſſign any national Motive. Our Alarm, therefore, muſt increaſe, ſince that Patriot Zeal ſeems alarm'd no longer, which adopted, at leaſt, the conſtitutional Jealouſy, and which had given, at leaſt, the Sanction of miniſterial and parliamentary Acquieſcence to the popular Diſcontent occaſioned before by the Troops of *Hanover*, we therefore conſider it as our bounden Duty to our Country, and to his Majeſty's Royal Family, to warn Poſterity to watch the Exertion of ſo dangerous a Prerogative, by which, upon the ſame Reaſoning and Pretence, that a ſmall Number of *Hanoverians* may be introduced into this Country, any greater Number may; and if that ſhall ever be the Caſe, the Rights and Liberties of this Country may be left at Mercy, or the *Proteſtant* Succeſſion in his Majeſty's Royal Houſe be, at leaſt, endangered by the Diſcontents which ſuch a Meaſure might produce in the Hearts of the People.

8*thly*, Becauſe we are diſcouraged ſtill more from engaging in the further Burthens and Hazards of this conſuming Meaſure, by the ſad View of the Situation of Affairs at Home. The Peace of the Kingdom is not yet intirely reſtored; the whole Expence already incurr'd by the Rebellion is not yet aſcertain'd; the further Expence, which may be incurr'd, cannot be yet foreſeen; the preſſing Demands of the Navy-Debt weaken us moſt where we ſhould endeavour to be ſtrongeſt; and ſince to theſe we may add the Stagnation of Commerce, the Decay of our Inland Trade, the vaſt Increaſe of our military Eſtabliſhment at Home, made up of Hands wanted by the Manufacturer, and the Farmer; the Decreaſe of national Wealth, the Difficulty and enhanced Expence of raiſing Supplies; when adding Debts to Debts, we have parted

parted, in Effect, with the very Power of Redemption, by mortgaging the Sinking Fund; the Fluctuation and Delicacy of the Publick Credit; the Combination of all these Circumstances presents to our Minds a dark and dangerous Situation (such a one as we would not have thus pointed out, if it remained a Secret to any one within, or without this Island) a Situation which, we apprehend, ought to fix our Attention, in the first Place, at Home, and to warn us not to precipitate the too nearly impending Ruin of our Country. We should rather hope for a proper Exertion of our own *British* Naval Strength, and by assisting the Powers more nearly concerned upon her Continent, with unsparing, but not with lavish Hands, to withstand the ambitious Designs of *France*; that we might regain to this Nation from foreign Powers that Respect grounded upon our Prudence, and upon our Strength rightly applied; which alone ought to be made the Foundation, and can alone be the Support of Peace. At least that we might find some Leisure from our Cares for others, to effect, if possible, our own domestick Welfare, instead of promoting (as we apprehend the present Measures tend to promote) National Calamity, Bankruptcy, and military Government.

9thly, Because our Duty to God, and to our Country, excites us, in such a Situation, more particularly to exert ourselves in Discharge of that Office, for which we stand accountable to both, being establish'd by the Constitution Guardians of the People, and Counsellors to the Crown, constituted to watch, to check, to avert, to retrieve, to support, or to withstand wherever our Duty suggests; in which no Desire of Opposition, no personal Dislike, no little Motive of Resentment, or of Ambition; no selfish, or no partial Consideration has ani-

animated, can relax, or shall disgrace our Conduct; affected deeply, but not depressed with the impending Ruin of our Country; we are determined not to be remiss in our Endeavours to retrieve its Welfare, which can only be effected by the Reestablishment of Peace, and of Order, by wise Oeconomy, and temperate Reformation, by regaining Confidence, and Authority to Government; and reviving in the Nation a truly *British* and moral Spirit. With all who will concur in such a Conduct we will unite with Affection. All other Connections and Views we disclaim and abhor.

Beaufort, *Suffolk and Berkshire*, *Northampton*, *Westmoreland*, *Ferrers*. *Oxford and Mortimer*, *Abingdon*, *Aylesford*, *Hereford*, *Foley*, *Mountjoy*, *Craven*, *Shaftesbury*, *Litchfield*, *Stanhope*, *St. John de Bletsoe*, *Ward*, *Maynard*, *Boyle*, *Talbot*.

Die Jovis, 21o *Mail*, 1747.

The Order of the Day being read for resuming the further Consideration of the Bill, entitled, *An Act for taking away and abolishing the heritable Jurisdiction in that Part of* Great Britain *called* Scotland, *and for making Satisfaction to the Proprietors thereof, and for restoring such Jurisdiction to the Crown, and for making more effectual Provision for the Administration of Justice, throughout that Part of the United Kingdom, by the King's Courts and Judges there, and for rendering the Union of the two Kingdoms more compleat.*

It was moved to commit the same.

Which being objected to, and long Debate thereupon, the Question was put, whether this Bill shall be committed?

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It

It was resolved in the Affirmative.

Dissentient

1*st*, Because changing the civil Constitution of *Scotland*, which the Act of Union reserved, and taking from the great Families in that Part of the Kingdom, without their Consent, and against their Will, their ancient Rights and Inheritances to be purchased by the Publick in this Time of their Distress, at a great but uncertain Expence, appears to us to be so extraordinary an Exertion of the Power of Parliament, as could only be justified by Necessity of State, or by some general, manifest, and urgent Utility to the Publick.

2*dly*, Because we apprehend this Bill not to be justified by any Necessity of State, since it is manifestly and avowedly ineffectual, if calculated for adding any further Security to his Majesty's Government, because it is not so much as pretended that this Bill can have any Effect upon the Influence of Clans, which arises from no legal Authority; and since from the legal Jurisdictions subject to the Controul, and necessarily under the Direction of the King's Courts in *Scotland*, Danger to Government is no more likely to rise, than from the Influence which Rank and Property may acquire in any other Part of his Majesty's Dominions.

3*dly*, Because the Utility to the Subjects in that Part of the Kingdom from this Bill, is not apparent to us, since it is not imagined that a real, a great, and extensive Benefit, should not be desired by the People of *Scotland*, when rendered to them, but, on the contrary, should meet with strong Opposition, cold Acquiescence or silent Disgust: And since no single Instance of Grievance has been alledged, but, on the contrary, it has been acknowledged, that no bad Use has been made of this Part of the ancient civil Constitution of *Scotland*, which it

it is intended by this Bill to aboliſh at once, and for ever.

4thly, Becauſe we do not conceive the Policy of making without Neceſſity, at this Time by a permanent Law, ſo conſiderable an Alteration in Government; nor do we apprehend the Wiſdom of purchaſing an ineffectual problematical Plan by a certain, but unknown Expence. Neither do we underſtand how it is conſiſtent with Juſtice to aboliſh the Rights of the Parties concern'd without previouſly adjuſting their Compenſations; nor can we reconcile with our Duty to the Publick, the delegating to the Court of Seſſion in *Scotland*, the Power of fixing the Sums to be raiſed upon the People, a new Method of creating a new Load of Expence in no Degree aſcertained, or ever ſuggeſted to Parliament.

5thly, Becauſe we apprehend, by the Maxims of the Conſtitutions of this Country, Influence in the Hands of the Crown, is more to be feared by the Abuſe of miniſterial Power, eſpecially in the Election of Members of Parliament, than when in the Hands of the Nobility and Gentry, whoſe Rank and Property are naturally the Supports of a free Government; and we cannot conceive how the Liberty of *Scotland* will be better preſerved by this Bill, which (in our Opinion) manifeſtly tends to conſtitute, at this Juncture, a new Influence over all the Counties of *North Britain*, by throwing a great and dangerous Power into the Hands of Miniſters; eſpecially when it is avowed, that ſuch an Alteration of Government may neceſſitate the Introduction of a military Force. A fatal Symptom. When it can even be mention'd in a *Britiſh* Parliament, that a Meaſure avowedly ineffectual for the Safety of Government, and evidently unneceſſary for the publick Utility, muſt, probably, be carried into Execution by military Force, which, if allowed, and not ex-

exerted, must produce an Influence of the most pernicious Kind; if exerted, establishes a military Government of the most dangerous Nature, because marked under the former Civil Government, a Practice tending, in either Case, totally to subvert the Constitution of this Country, and to which, therefore, we can never consent.

Oxford and Mortimer, *Denbigh*, *Ward*,
Westmoreland, *Litchfield*, *Talbot*,
Ferrers, *Stanhope*, *Beaufort*.
Shaftesbury,

Die Jovis 10 *Junii*, 1749.

Hodie 3a *vice lecta est Billa*, intitled, *An Act for the further Enlarging the Farm and Power granted and continued by two Acts of Parliament, the one passed in the Twelfth Year of the Reign of her late Majesty Queen* Anne, *and the other in the Twelfth Year of the Reign of his late Majesty King* George *the First, for Repairing the Roads from the City of* Worcester *through the Borough of* Droitwich, *to* Dyer's Bridge *near* Bromsgrove *in the County of* Worcester, *and also Repairing the Roads from* Dyer's Bridge, *through the Town of* Bromsgrove *to* Spadesbourn Bridge, *and from* Droitwich *to* Bradley Brook *in the same County.*

Then it was moved, That, in the 30th and 31st Lines of the seventh Press, these Words, *viz.* ("before the 31st Day of *July* 1748") be left out.

And the same being objected to, the Question was put, whether those Words shall stand Part of the Bill?

It was resolved in the Affirmative.

Dissentient'

1*st*, Because it appear'd by these Books and Deed produced before the Committee, that the Persons hereby to be excluded were elected into this Trust by a legal Number of surviving Commissioners, in Pursuance

ſuance of an Act paſſed in the Twelfth Year of his late Majeſty's Reign, which is mentioned in the Title of this Bill, wherein are theſe Words; "And "all and every Perſon or Perſons ſo elected, nomi-"nated and appointed, is and are hereby impow-"ered to act and do, in putting this and the ſaid "former Act in Execution, in as full and ample "a Manner as any of the Truſtees named in the "ſaid former or this preſent Act are impowered to "act and do." By which it appears, that theſe Perſons have the ſtrongeſt Titles to the Rights and Privileges granted by that Act; which Act is not repealed by the preſent Bill, and of which ſeven Years remain yet unexpired.

2*dly*, Becauſe the depriving Perſons of their Franchiſes, which they are in the actual Poſſeſſion of, and enjoy, under the Authority of two Acts of Parliament, without the leaſt Miſdemeanor or Complaint ſuggeſted againſt them, ſeems, in our Opinion, too great a Deviation from that ſtrict Regard which this Houſe has always ſhewn to the Property of the Subject.

3*dly*, Becauſe we look on retroſpect Laws, in general, as injurious to the Perſons againſt whom they are made; but more particularly ſo in the preſent Caſe, where a Puniſhment is inflicted without any Crime alledged, which we conceive to be without Example; we are therefore at a Loſs to reconcile ſuch a Proceeding to the Principles of Juſtice or Reaſon, eſpecially as we have heard no Argument made Uſe of to ſupport it.

4*thly*, Becauſe we apprehend a Precedent of this Nature may be productive of the moſt fatal Conſequences, as it tends, in our Opinion, to invalidate parliamentary Rights, and may hereafter be equally applied to Caſes of a higher and more dangerous Nature: And if ever that ſhould happen, we do not ſee what Security any Subject of theſe Kingdoms

Kingdoms can have for his Liberty and Property which have been so long the Boast of the *British* Constitution.

Foley, *Shaftesbury*, *Oxford and Mortimer*.

Die Jovis, 13° *Novembris*, 1755.

A Proposition was made for an Address of Thanks, *&c.* on his Majesty's Speech; and a Question being stated thereupon, it was moved to leave out these Words, *viz.* "or against any other of his "Dominions, although not belonging to the "Crown of *Great Britain*, in Case they shall be at-"tack'd on Account of the Part taken by his Ma-"jesty, for the Support of the essential Interests of "*Great Britain*."

After Debate, the Question was put, whether those Words shall stand Part of the said Question.

It was resolv'd in the Affirmative.

Dissentient'

1*st*, Because the Words of the Address objected to, pledging the Honour of the Nation to his Majesty in the Defence of his Electoral Dominions, at this critical Conjuncture, and under our present incumber'd and perilous Circumstances tend not only to mislead his Majesty into a fallacious and delusive Hope that they can be defended at the Expence of this Country, but seem to be the natural and obvious Means of drawing on Attacks upon those Electoral Dominions; thereby kindling a ruinous War upon the Continent of *Europe*, in which it is next to impossible that we can prove successful, and under which *Great Britain*, and the Electorate itself, may be involv'd in one common Destruction.

2*dly*, Because it is, in Effect, defeating the Intention of that Part of the Act of Settlement (the second Great Charter of *England*) whereby it is enacted, "That in Case the Crown and Imperial Dig-"nity of this Realm shall hereafter come to any

"Person

" Person not being a Native of this Kingdom of " *England*, the Nation be not obliged to engage in " any War, for the Defence of any Dominions or " Territories which do not belong to the Crown of " *England*, without the Consent of Parliament." For if at this Juncture, under all the Circumstances of our present Quarrel with *France*, to which no other Prince in *Europe* is a Party, and in which we do not call for, nor wish to receive the least Assistance from the Electorate of *Hanover*, it shall be deemed necessary, in Justice and Gratitude, for this Nation to make the Declaration objected to, there never can be a Situation, or Point of Time, when the same Reasons may not be pleaded, and subsist in their full Force: Nor can *Great Britain* ever engage in a War with *France*, in the Defence of her most essential Interests, her Commerce, and her Colonies, in which she will not be deprived of the most invaluable Advantages of Situation bestowed upon her, by God and Nature, as an Island.

3*dly*, Because, without any such previous Engagement, his Majesty might safely rely upon the known Attachment of this House to his sacred Person, and upon the Generosity of this Country, famous and renown'd, in all Times, for her Humanity and Magnanimity, that we would set no other Bounds to an Object so desireable, but those of absolute Necessity and Self-preservation, the first, and the great Law of Nature. *Temple.*

Die Mercurii 10o *Decembris*, 1755.

The House (according to Order) proceeded to take into Consideration the Copies of the Treaties laid before the House, by his Majesty's Command, on *Wednesday* the 26th of *November* last.

And the said Treaties being read by the Clerk, it was mov'd to resolve, That it is the Opinion of this House, that the two subsidiary Treaties, lately con-

concluded with the Empreſs of *Ruſſia* and the Landgrave of *Heſſe Caſſell* reſpectively, tend to involve this Nation in an expenſive and ruinous War upon the Continent, to conſume our Strength and Treaſure, and to divert us from the Exertion of our utmoſt Efforts for the Defence of theſe Kingdoms, threaten'd with Invaſion, and for the Recovery and Protection of our Poſſeſſions in *America*, incroached upon, and actually invaded, by the Arms of *France*.

Which being objected to, after long Debate thereupon, the Queſtion was put upon the ſaid Motion.

It was reſolv'd in the Negative.

Diſſentient'

1*ſt*, Becauſe though it was urged in the Debate on this Motion, that the ſubſidiary Treaty with the Empreſs of *Ruſſia* had a pacifick Intention, I apprehend its Operation may prove fatally the Reverſe of ſo prudential a View, the Clauſes it contains of free Quarter and prædatory Devaſtation, rather denouncing Hoſtility, than ſpeaking the equitable and conciliating Language of Peace.

2*dly*, Becauſe in the late War, the Troops of the Landgrave of *Heſſe*, levied at the Expence of this Nation, and duly paid their ſtipendiary Hire, in Violation of federal Faith, engaged themſelves in the Service of the Emperor *Charles* the Seventh, then in Arms againſt the Cauſe mention'd by the *Britiſh* Standard.

3*dly*, Becauſe an Event may happen, which may make the Proteſtant Succeſſion in theſe Kingdoms not the Object of the Wiſhes, or conſider'd as the Intereſt of a Landgrave of *Heſſe*.

4*thly*, Becauſe I am convinced that a proper Exertion of our Strength on the *American* Continent, and a ſteady Purſuit of the vigorous and laudable Conduct of our naval Force, will enable us to dictate Terms of Peace to the Court of

Versailles; and as firmly believe that a War upon the *European* Continent must soon reduce us to implore them. *Talbot.*

Die Veneris 5o Martii, 1756.

The Order of the Day being read for the third Reading of the Bill intitled, *An Act to enable his Majesty to grant Commissions to a certain Number of foreign Protestants who have served Abroad as Officers or Engineers, to act and rank as Officers or Engineers in* America *only, under certain Restrictions and Qualifications.*

The said Bill was accordingly read the third Time.

After Debate, the Question was put, whether this Bill shall pass?

It was resolv'd in the Affirmative.

Dissentient

1*st*, Because this Bill, to enable his Majesty to grant military Commissions to a certain Number of Foreigners, is framed in direct Opposition to the Principle and Letter of that Provision, in the Act of the Twelfth of King *William* the Third, for the further Limitation of the Crown, and better securing of the Rights and Liberties of the Subject, which expresly provides that no Foreigner, even although he be naturalized, or made a Denizen, shall be capable to enjoy any Office or Place of Trust, civil or military; which Provision having since been renewed by the Legislature, and the Report thereof guarded against by the Act of the First of King *George* the First, as far as a Law in one Age can prevent the Repeal in another, has to this Day been consider'd and reverenced as an essential and sacred Part of our present Constitution.

2*dly*, Because none of the Allegations in Favour of this Measure, upon the Truth of which alone the Expediency or Necessity thereof must depend, have

have been in any Degree prov'd: On the contrary, when Facts asserted have been denied, and it has been propos'd to go into the Enquiry, upon Evidence brought from those Provinces, where this Necessity is suppos'd to take its Rise, all Witnesses have been refus'd, and necessary Information precluded; and surely the Plea of Necessity, alledg'd in Support of this Measure (a Plea always to be receiv'd with Suspicion, when urged to introduce a Change in a free Constitution) is in the present Case not a little extraordinary, as that Necessity, if it does exist, can only arise from the present neglected, defenceless and calamitous State of our *American* Colonies, whose Distress and Danger have been brought upon them, as we really believe, by the Conduct of an Administration, who after having, with an unexampled Patience, acquiesced under an uninterrupted Course of Encroachments from the Treaty of *Aix la Chapelle* to the Year 1754, when actual War broke out (a Fort of his Majesty being taken, and his Troops attacked and beaten in the Meadows) did at last send the small Succour of Two Battalions only, consisting of no more than Five Hundred Men each, under General *Braddock*, since whose Defeat in *July* last no farther Succour of Troops has been sent to *America*.

3*dly*, Because we have Reason to believe, that if Evidence had been admitted, it would have appear'd that this Bill, as a Scheme for raising an *American* Force, is neither expedient nor necessary; that the granting Commissions to foreign Officers, Strangers to *America*, and Aliens to *Great Britain*, will retard, and possibly prevent the Levies they are pretended to facilitate; and that the granting such Commissions from his Majesty to Rank in *America*, and Half Pay in *Great Britain*, to these foreign Officers, Advantages repeatedly refus'd to the Provincial Troops of *North America*, as well as by a

moſt dangerous Innovation giving Power to ſuch foreign Officers to ſit in Courts Martial, and tho' Aliens themſelves, to judge upon the Lives and Honour of his Majeſty's natural-born Subjects, muſt create an univerſal Diſguſt there, highly prejudicial to the Rights of his Majeſty, and to the Intereſts of this Country.

4thly, Becauſe the Proviſion in the Bill, which enacts that the Colonel ſhall be a natural-born Subject, does not really contain that Security which it affects to give againſt the Command of the Regiment devolving upon a Foreigner, as there may be fifty foreign Officers employ'd in the Regiment, whoſe Commiſſions are not otherwiſe reſtrain'd to any Rank; and upon the Abſence of the Colonel, who is a General Officer, or in Caſe of his Death, if the eldeſt of the four Colonel Commandants ſhould be a Foreigner, the Command of the Regiment muſt devolve upon an Alien, againſt which the Bill does not provide, though the Title of Colonel of the Regiment is indeed with-held from him; which Conſideration has the more Weight with us, as it may happen that, at the Time when the Command ſhall ſo devolve upon the foreign Officer, the four Colonel Commandants, all the Field Officers, and all the Captains in the four Battalions, may be foreign alſo; and in that Event not only the preſent and future Defence, but the Civil Liberties of *North America*, will be intruſted to a Body of Soldiers (perhaps Aliens alſo) commanded by Officers neither *American* nor *Britiſh*. And it is very remarkable, that this Regiment, intended for the immediate Relief of our Colonies, in their preſent imminent Danger, cannot poſſibly be rais'd early enough to act this Campaign; although it hath been preferr'd, ineffectual and diſguſtful as it is, to every other Sort of military Force; notwithſtanding it is obvious too, that out of great Numbers

bers of Officers, natural born *British* Subjects, at this Time in the Service of our Proteſtant Allies, and out of *American* Officers who have ſerved with Reputation in all our late Expeditions in thoſe Parts, a Force might have been raiſed and officered without any Change in our Conſtitution, and with the entire Satisfaction of *America*.

5thly, Becauſe the Bill founded upon an Expediency, which is not alledged to be more than temporary, and which from its Nature cannot be otherwiſe, is in its Frame and Duration perpetual; by which not only the Remedy, odious in itſelf, is extended, without Neceſſity, beyond the pretended Occaſion for it, but a Pretext is found for a perpetual Repeal of one of the moſt eſſential Parts, ſtill left ſubſiſting of the original Act of Settlement in a Caſe, and in an Age, when every ſober and thinking Man would feel a Reluctance, in ſuſpending it, even upon the ſtrongeſt Proof of Neceſſity, for the Conjuncture only; more particularly as the ſame Diſpoſition and Turn of Policy which, upon the Pretence of a temporary Expediency, has fixed upon *America*, this perpetual Law may in a future Time, at ſome Seaſon advantageous to the Deſign, upon a ſimilar Expediency contrived and not ſuffered to be examined, contend for, and carry a Bill of the ſame Sort for *Great Britain*: And if this ſhould happen, which God avert, the Sword of both Countries will be lodged in foreign Hands, to the intire Overthrow of the preſent Conſtitution, and to the Subverſion of the Liberties of *Great Britain*.

For theſe Reaſons we are of Opinion, that if we had given our Aſſent to this Bill, which is a manifeſt Departure from a ſacred Proviſion in the Act of Settlement, contemporary with the moſt ſolemn Confirmation of our Civil Liberties, and enacted as the firmeſt Barrier for the Preſervation of that

great Work. We ſhould have been unmindful of our Duty as Peers of this Realm, careleſs of our Rights as *Britiſh* Subjects, and wanting to the Security of our Poſterity; perſuaded as we are, that when the Tendency, Novelty, and Danger of this Meaſure ſhall be thoroughly known and conſidered in *America*, the Force propoſed will probably never be raiſed; and convinced that if it ſhould be raiſed, it ought not to be truſted, that it may not only excite and ſpread a deep and univerſal Diſguſt and Apprehenſion in the Minds of his Majeſty's moſt loyal and deſerving *American* Subjects, but even deprive us of the Exertion of all the natural Strength of *America*, where ſuch eminent Services have very lately been voluntarily performed by ſeveral of the *North American* Colonies, thereby rendering the War in thoſe Parts, which conducted with common Prudence, and timely Precaution, might have had a ſpeedy and honourable Iſſue, extremely dilatory, impracticable, and ruinous; bringing upon our Arms Diſappointment, and upon our Councils Diſgrace.

Temple, *Talbot*.

Die Martis 30° *Maii*, 1758.

The Order of the Day being read for reſuming the adjourn'd Conſideration of the Bill intitled, *An Act for giving a more ſpeedy Remedy to the Subject upon the Writ of* Habeas Corpus, *and for hearing the reſt of the Judges upon the ſeveral Queſtions put to them in Relation to the ſaid Bill:* And they being heard accordingly, it was propoſed that the following Queſtion be put to them; Whether, if a Writ of *Habeas Corpus ad ſubjiciendum* at the Common Law be applied for, either in Term or Vacation Time, by the Friend or Agent, and on the Behalf of any Perſon under actual Confinement or Reſtraint; and if the Perſon, ſo applying, ſhould make

make an Affidavit of ſuch Confinement or Reſtraint, and that he believes the ſame not to be by Virtue of a Commitment for criminal or ſuppoſed criminal Matter, but ſhould declare that he could give no other material Information relative thereunto, would ſuch an Affidavit, as the Law now ſtands, be a proper probable Cauſe for the awarding of the ſaid Writ of *Habeas Corpus*, and would the Court or Judge be bound immediately to award the ſame, as a Writ of Right, or would the Court or Judge be bound to refuſe the ſame upon ſuch Affidavit only, or is it in ſuch Caſe entirely left to the Diſcretion of the Court or Judge to grant the ſaid Writ of *Habeas Corpus* to one Perſon upon ſuch Affidavit, if they ſhall ſo think fit?

And the ſame being objected to, after Debate, the Queſtion was put, whether the ſaid Queſtion ſhall be put to the Judges?

It was reſolved in the Negative.

Diſſentient'

1*ſt*, Becauſe the Caſe ſtated in this Queſtion tends to aſcertain the Nature, Degree, and Extent of that dangerous Diſcretion now contended for in awarding Writs of *Habeas Corpus ad ſubjiciendum*, to which Diſcretion no Bounds by the Terms of the Opinions delivered by the Judges are as yet ſet; and this Matter is not ſtated in any other of the ſaid Queſtions propoſed to them: Nor doth it appear, by any of their Anſwers, whether this preciſe Caſe, exactly the ſame as that required by the Bill under Deliberation be or be not, in their Opinion as the Law now ſtands, a proper probable Cauſe for the awarding of the Writ aforeſaid.

2*dly*, Becauſe one of the principal Reaſons urged in the Debate for not allowing this Queſtion to be propoſed to the Judges, was, that the aſking it implied an Imputation upon them, by ſuppoſing they would grant it to one Perſon, and refuſe it to

another on the ſame Caſe, whereas the Queſtion is not whether they would, but whether by Law they could exerciſe ſuch a Diſcretion; and it is of Importance to aſcertain, whether, in their Opinion, the Character and Credibility of the Perſon applying upon Oath for the Writ, can and ought to determine the Judge in the Exerciſe of that Diſcretion.

3dly, Becauſe there is great Reaſon to believe, that if this Queſtion had been ſuffered to be put, it might have appeared that an actual Confinement or Reſtraint, verified in the Manner ſtated in the Queſtion and Bill, is by the Law, as it now ſtands, a ſufficient Cauſe for the granting the ſaid Writ, and, conſequently, that the ſaid Proviſions in this Bill to enforce the awarding it, and a ſpeedy Obedience in the Return thereto, are agreeable to the fundamental Principles of Law and Juſtice, and eſſentially neceſſary to the Freedom of the Subject.

Temple, C. P. S.

Die Veneris 20 *Junii*, 1758.

The Order of the Day being read for the reſuming the adjourn'd Conſideration of the Bill intitled, *An Act for giving a more ſpeedy Remedy to the Subject upon the Writ of* Habeas Corpus, it was moved to commit the Bill; which being objected to, after long Debate the Queſtion was put, whether the ſaid Bill ſhall be committed?

It was reſolv'd in the Negative.

Diſſentient'

1ſt, Becauſe, until ſome effectual and ſpeedy Remedy be provided, by a new Law, for the awarding and returning Writs of *Habeas Corpus ad ſubjiciendum* in Caſes not within the Statute of the 31 *Car*. II. the Subject may, in many Inſtances, be oppreſſed, and deprived of his Liberty, without

out the Possibility of Redress, that Remedy which our Ancestors have wisely provided and enforced by the Statute for the immediate Relief of the Guilty, being denied to the Innocent.

2*dly*, Because the Subject is left under the most perplexing and grievous Incertainties, of various Kinds, which appear from the contradictory Opinions and Reasons delivered by the Judges, in Answer to some of the Questions stated to them; all which Reasons, whereupon their Answers were founded, they did unanimously desire Leave to decline giving in Writing to the House, whereby it would have appeared that some of the Judges conceived that the Practice of awarding Writs of *Habeas Corpus* in Vacation Time, was founded upon ancient Precedents, and Principles of Law, without which Support it was held, that no Practice of Judges, within Time of Memory, was powerful enough to establish a Law, while others, denying any such Principle and Law to have ever existed, and not admitting the Force of such Precedents, maintained such Practice, since the Statute was sufficient to give that Usage the Stamp of Law. Others, again, contended strongly, that neither the one nor the other Opinion could be supported, but that the Practice was well justified by an equitable Construction of the Statute; which was opposed by others, who thought that such Practice might well be introduced upon the Plan of the Statute by Analogy; from all which Variety of Notions, not only the Legality of this Practice, but the Unanimity of Opinion which regularly ought to result from Uniformity of Principles, may well be questioned, since the same Conclusion cannot fairly or safely be deduced from clashing and discordant Principles.

3*dly*, Because it is now become of indispensible Necessity, to define with Precision what shall be deemed

deemed a probable Cause, under which the Judges, at all Times, shall be bound to issue the Writs aforesaid, that they may not in bad Times, under Words of so alarming a Latitude, assume an arbitrary Discretion destructive of the personal Liberty of the Subject, in manifest Violation of the ancient known Common Law of the Land, confirmed by *Magna Charta*, and declared by the strongest, clearest, and most unanimous Resolutions of both Houses of Parliament (hereby referred to) made, in different Ages, upon two solemn Occasions, with the Assistance of the ablest and most eminent Lawyers and Statesmen, and because the general Doctrines and Opinions laid down in the Course of this Debate, that neither a Judge, nor the Court, are bound to grant this great Remedial Writ to the Subject, upon Proof of actual Confinement, verified by Affidavit, are not supported by any single Determination of any one Court of Justice, and are directly repugnant to the Reason and Genius of the Law of this free Country.

Commons Journal, 3° *Aprilis*, 1628.

Resolved upon Question, That the Writ of *Habeas Corpus* may not be denied, but ought to be granted to every Man that is committed or detained in Prison, or otherwise restrained, though it be by the Command of the King, the Privy Council, or any other, he praying the same without one Negative.

Lords Journal, 9° *Aprilis*, 1628.

Mr. *Selden*, who was Manager with Sir *Dudley Diggs*, Mr. *Littelton*, and Sir *Edward Coke*, speaking in the Name of *the House of Commons*, says, "Now, my Lords, if any Man be so imprisoned, "by any such Command, or otherwise, in any Pri-"son wheresoever through *England*, and desire,

"either by himself, or by any other in his Behalf, "the Writ of *Habeas Corpus* for the Purpose in the "Court of *King's Bench*, the Writ is to be granted "to him, and ought not to be denied him, no "otherwise than any ordinary Original Writ in the "Chancery, or other common Process of Law "may be denied; which, among other Things, "*the House of Commons* hath also resolved, upon "mature Deliberation; and I was commanded to "let your Lordships know so much."

Lords Journal, 27° *Februarii*, 1704.

Resolved, That every *Englishman* who is imprisoned, by any Authority whatsoever, has an undoubted Right, by his Agents or Friends, to apply for and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty, by due Course of Law.

Lords Journal, 13° *Martii*, 1704.

Report of a Representation to the Queen, in which are contained the following Words; *viz.*

"It has been allowed, by the known Common "Law, it is the Right of every Subject, under "Restraint, upon Demand to have his Writ of "*Habeas Corpus*, and thereupon to be brought be-"fore some proper Court, where it may be exa-"mined whether he be detained for a lawful "Cause." *Temple*, C. P. S.

Die Veneris 50 *Februarii*, 1762.

The House (according to Order) proceeded to take into Consideration his Majesty's most gracious Speech from the Throne on *Tuesday* the 19th Day of *January* last.

And the same being read by the Clerk, it was moved to resolve, That it is the Opinion of this House, that the War at present carried on in *Germany* is necessarily attended with a great and enormous

ormous Expence; and that, notwithstanding all the Efforts that can possibly be made, there seems no Probability the Army there, in the Pay of *Great Britain*, so much inferior to that of *France*, can be put into such a Situation, as to effectuate any good Purpose whatsoever; and that the bringing the *British* Troops Home from *Germany* would enable his Majesty more effectually to carry on, with Vigour, the War against the united Forces of *France* and *Spain*, give Strength and Security to *Great Britain* and *Ireland*, support the Publick Credit, and, by easing the Nation of a Load of Expence, be the likeliest Means, under the Blessing of God, to procure a safe and honourable Peace.

Which being objected to, and a Question being stated thereupon, after Debate, the previous Question was put, whether the said Question shall be now put?

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It was resolved in the Negative.

Dissentient'

1*st*, Because the main Question being so true in every Particular, which was assented to by most of the Lords who spoke in this Debate, and no Argument being alledged that it was unconstitutional, the previous Question should not, in the present Case, have been insisted on, as thereby Lords were debarred from laying before the Throne their Sense on a Matter of this Importance.

2*dly*, Because in the Debate there was no Shadow of Argument used, to shew the Impropriety of this Question being brought before the House at this Time, or that it was prematurely undertaken by the Lord who moved it: On the contrary, it was proved, by irrefragable Arguments, that if the Matter was right to be done, no Time should be lost in bringing the *British* Forces Home during their Winter Quarters, which was the only Season when

when it could be done with Safety, and without any possible Impediment from the Enemy.

3dly, The present Situation of the War, by the additional Weight of the Crown of *Spain*, being thrown into the Scales against us, doth undoubtedly require, at this very critical Time the utmost Frugality, towards easing the Nation from any unnecessary Expence; and as the present War in *Germany* is indisputably carried on at a great and enormous Expence, and, in the general Conception of Mankind, without any Possibility of any Good being reaped from it, it seems the undoubted Right of every Lord of this House, to submit to Parliament his Opinion against a longer Continuance of such Measures as have already proved so detrimental to the Publick, by involving this Nation in an additional Debt of near Six Millions yearly, without serving any one *British* Purpose, or even supporting, with Efficacy, those Countries for whose Preservation it has been pretended these immense Supplies have been granted.

4thly, A Continental War, carried on in *Germany* without Allies, and at the sole Expence of *Great Britain*, whilst this Nation is involved in a War with the Two most considerable Maritime Powers of *Europe*, cannot be esteemed a System of true Policy; as *France*, let the Success against her Arms be ever so great, is not vulnerable from that Quarter; and *Spain*, on Account of her Distance, would, doubtless, not be intimidated by the Success of the *British* Arms in *Germany*.

5thly, The Expedience of the present Continental War cannot be justified, either on the Principles of its being a War of Diversion of the Forces of *France* from the invading his Majesty's Dominions, or the succouring their own Colonies, both of which they are incapacitated from doing, by the Ruin of their Naval Force: Neither can it be

be alledged as a Meaſure calculated to ſupport the King of *Pruſſia*, who is not at War with *France*, nor in Danger, though the *Britiſh* Troops ſhould be withdrawn, of being cruſhed by that War, whoſe Intereſt will, undoubtedly, reſtrain her from taking a Step, which could only tend to the Aggrandiſement of the Houſe of *Auſtria*, the ancient and natural Rival of the Houſe of *Bourbon*.

6thly, The preſent great Scarcity of Specie, and the low State of the Publick Funds, render it the indiſpenſible Duty of this Houſe, to ſuggeſt to the Throne, every Means of preventing an unneceſſary Profuſion of the Publick Treaſure, more eſpecially when the Payments that muſt be daily made, and which muſt be done by the Exportation of Bullion, muſt unavoidably cauſe ſuch a Stagnation of Trade and Induſtry, as may be of the moſt fatal Conſequence to this Country, which can in no Degree be compenſated for on the ill-grounded Notion, that the Expences of the Enemy are equally great and burthenſome to them, which is not only denied, as it can never be proved; but is, moreover, exploded by this undeniable Truth, that *France*, by withdrawing her Troops, can put an End to it whenever ſhe pleaſes, and without any Danger to herſelf of being attacked by an inferior Army on her own Frontiers on that Side, and which, as ſhe has not yet done, is a ſufficient Proof of the Truth of this Propoſition.

7thly, The agreeing to the Reſolution propoſed could be in no Degree conſtrued as a Breach of Faith to our Allies, or a Stain to the Honour of the Nation, as we are bound by no Treaties to keep an Army in *Germany*, and the War on that Continent ſeems to have been entered into voluntarily by us, without being called upon by any other Powers, and moſt precipitately taken up

again

again, when it had been so happily extinguished by the Convention of *Closter Seven.*

Wycombe, *Brooke and Warwick*, *Pomfret*, *Bridgewater*, *Dunmore*, *Vere*. *Bedford*, C. P. S.

Die Lunæ 28o *Martii*, 1763.

The Order of the Day being read for the second Reading of a Bill intitled, *An Act for granting to his Majesty several additional Duties upon Wines imported into this Kingdom, and certain Duties on all Cyder and Perry; and for raising the Sum of Three Millions Five Hundred Thousand Pounds, by way of Annuities and Lotteries, to be charged on the said Duties.*

The said Bill was accordingly read a second Time; and it being proposed to commit the Bill, the same was objected to.

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After a long Debate thereupon, the Question was put, Whether this Bill shall be committed?

It was resolved in the Affirmative.

Dissentient'

1st, Because we conceive there would have accrued less detriment to the Publick by rejecting this Bill, than by agreeing to it; since it would have been easy, had the Bill been rejected, to have provided the necessary Supplies by some other Ways and Means, less dangerous to the publick Liberty than the Extension of the Laws of Excise, over new Orders of Men, who, by mere Ignorance and Inadvertency, may be subjected to the severest Penalties for Things done in the common, ordinary, and necessary Management of their Farms.

2dly, Because blending distinct Matters in the same Money-bill, lays this House under the utmost Difficulties; since the Alteration made by this House, to any Parts of such Bill, may be an unavoidable

avoidable Obſtruction to other Parts of it, leſs liable to Objection, and requiring greater Expedition and Diſpatch: And we conceive, that to tack unto ſuch a Bill, Matters, which, for many Reaſons, ought to be kept ſeparate and diſtinct, is deſtructive of all Freedom of Debate and all due Deliberation, unparliamentary, highly derogatory to the Privilege of the Peers, and may be of dangerous Conſequence to the Prerogative of the Crown.

3dly, Becauſe we apprehend that ſuch Parts of the ſaid Bill as extend the Laws of Exciſe over the Makers of Cyder and Perry, are not only injurious to the Liberties of the ſubject, but particularly offenſive to the Dignity and Privilege of the Peers; ſince their houſes may be viſited and ſearched, and they themſelves may incur the Penalties of this Bill, to be levied upon them by Juſtices of the Peace, and Commiſſioners of the Exciſe: We are therefore doubly called upon to diſſent from the paſſing of this Bill, by a due and juſt Senſe of the Dignity and Privilege of the Peerage, and by a tender Regard to the Liberties and Properties of the People, of which this Houſe hath been always eſteemed the hereditary and perpetual Guardians.

4thly, Becauſe when we conſider the great Number of Families, over whom and their Poſterities the Laws of Exciſe are extended by this Bill, the Incapacity of Farmers to comply with it, not only in Reſpect to their Ignorance, but to the Nature of their Buſineſs; the heavy Penalties impoſed for involuntary Offences; the ſummary and arbitrary Method of trying and determining thoſe Offences, and of levying thoſe Penalties; the great and expenſive Increaſe of Officers to be employed in collecting an inconſiderable and very uncertain Revenue; and the Influence of thoſe Officers, which, in critical Times, may be employed to the worſt of Pur-

Purposes; we cannot but be most seriously alarmed at a Stretch of Power, so wide, so unnecessary, and so unconstitutional.

Foley, *Oxford and Mortimer*, *Willoughby de Broke*.

On the third Reading, there was a second Protest, as follows.

Die Mercurii 30° Martii, 1763.

Dissentient

1st, Because by this Bill our Fellow-subjects, who from the Growth of their own Orchards make Cyder and Perry, are subjected to the most grievous Mode of Excise; whereby private Houses of Peers, Gentlemen, Freeholders, and Farmers, are made liable to be entered and searched at Pleasure. We deem this to be not only an intolerable Oppression, affecting private Property, and destructive of the Peace and Quiet of private Families; but, to use the Words of one of the first gracious Acts of Liberty, passed by our gracious Deliverer, King William the Third, repealing the Hearth Money, "a Badge of Slavery."

2dly, Because we think we owe it to our Countrymen, who have so chearfully submitted to the great Load of Taxes, which have been found necessary, in Support of a just, prosperous, and glorious War; by every Means in our Power to mark our high Disapprobation of the Terms upon which Three Millions Five Hundred Thousand Pounds have been borrowed on this Loan, without any material Alteration since in the State of the publick Credit; an enormous Profit of above Three Hundred and Fifty Thousand Pounds is already made by such Persons as have been favoured with Shares in this private Subscription. We apprehend that, in Time of Peace, an open Subscription had not only been the fairest, but the cheapest Method of borrowing any Sums, which the Necessities of

the Publick might call for. It appears to us, by the Votes of *the House of Commons*, that on the 8th of this Instant, *March*, this Bargain was first consented to by them; whereby a redeemable Annuity of Four *per Cent.* is given to certain Persons, who offered to advance this Loan. No less than Two Lotteries in one Year, are now, for the first Time, without any urgent Necessity, established in the Days of Peace, to the no small Excitement of the pernicious Spirit of Gaming, which cannot be too much discountenanced by every State, governed by Wisdom, and a sober Regard to the Morals of the People. Two Lottery Tickets, bearing Four *per Cent.* Interest, from the 5th Day of *April*, 1763, are allowed at Ten Pounds each, to every Subscriber of Eighty Pounds: Whereas, Interest at Three *per Cent.* and that to commence only in a future Year, hath been given upon former Lotteries, during the highest Exigencies of the Publick; at a Time too, when there was in Contemplation a Loss of no less than Thirty *per Cent.* upon every Blank and every Prize; and when no less a Sum than Twelve Millions was borrowed for the Service of the Government. On the 8th of this Instant, aforesaid, and for several Days preceding, the general Price of Stock was very much upon an Equality with that which they bear at present; nor hath any considerable Variation happened in the great Three *per Cent.* and Four *per Cent.* Annuity Funds since that Time. The redeemable Annuity, exclusive of the Profit so certainly to be made upon the Lottery Tickets, sells at a Premium of Two and a Half *per Cent.* and the Advantage made upon the whole Loan, including that on the Lottery Tickets, is from Ten to Eleven *per Cent.* clear Profit; whereby an exorbitant Gain arises to Individuals at the Expence of the Publick.

For

For these cogent and unrefuted Reasons, we have thought it incumbent upon us to withstand, at the Outset, such alarming Proceedings; so repugnant to the Principles of Œconomy, and to the Spirit of Liberty; and by this solemn Testimony to declare, that we are determined, upon all Occasions, to endeavour to protect, as far as in us lies, the meanest of our Fellow-subjects from Oppression of every Kind.

Temple, *Bolton*, *Fortescue*.

This was the first Time the Lords were ever known to divide upon a Money Bill *.

Die Martis 29o *Novembris*, 1763.

The Order of the Day for resuming the adjourned Consideration of the Report of the Conference with the *Commons* on *Friday* last being read, the third Resolution of the *Commons* was read as follows:

"*Resolved by the* Commons *in Parliament assembled*,

"That Privilege of Parliament does not extend "to the Case of writing and publishing seditious "Libels, nor ought to be allowed to obstruct the "ordinary Course of the Laws, in the speedy and "effectual Prosecution of so heinous and dangerous an Offence."

And it being moved to agree with the *Commons* in the said Resolution, the same was objected to.

* The following Lords composed the Minority upon this Question; *viz.* the Dukes of *Grafton*, *Bolton*, *Devonshire*, *Newcastle*, and *Portland*; Marquis of *Rockingham*; Earls of *Suffolk*, *Plymouth*, *Oxford*, *Ferrers*, *Dartmouth*, *Bristol*, *Ashburnham*, *Temple*, *Cornwallis*, *Hardwicke*, and *Fauconberg*; Viscounts *Torrington*, *Folkestone*, and *Spencer*; Lords *Abergavenny*, *Willoughby de Broke*, *Ward*, *Foley*, *Ducie*, *Monson*, *Fortescue*, *Archer*, *Ponsonby*, *Walpole*, *Lyttelton*, *Sonds*, *Grantham*, and *Grosvenor*; Bishops of *Ely*, *Hereford*, *Worcester*, *Litchfield*, *Norwich*, *Lincoln*, *Chichester*, *St. Asaph*, and *Oxford*.

After long Debate thereupon, the Question was put, Whether to agree with the *Commons* in the said Resolution?

It was resolved in the Affirmative.

Dissentient

Because we cannot hear, without the utmost Concern and Astonishment, a Doctrine advanced now, for the first Time, in this House, which we apprehend to be new, dangerous, and unwarrantable; *viz.* that the personal Privilege of both Houses of Parliament has never held, and ought not to hold, in the Case of any criminal Prosecution whatsoever; by which all the Records of Parliament, all History, all the Authorities of the gravest and soberest Judges, are entirely rescinded; and the fundamental Principles of the Constitution, with Regard to the Independence of Parliament, torn up and buried under the Ruins of our most established Rights.

We are at a Loss to conceive with what View such a Sacrifice should be proposed, unless to amplify, in Effect, the Jurisdiction of the inferior, by annihilating the ancient Immunities of this superior Court.

The very Question itself, proposed to us from the *Commons*, and now agreed to by the *Lords*, from the Letter and Spirit of it, contradicts this Assertion; for, whilst it only narrows Privilege in criminal Matters, it establishes the Principle. The Law of Privilege, touching Imprisonment of the Persons of Lords of Parliament, as stated by the two standing Orders, declares generally, That no Lord of Parliament, sitting the Parliament, or within the usual Times of Privilege of Parliament, is to be imprisoned or restrained without Sentence or Order of the House, unless it be for Treason or Felony, or for refusing to give Security for the Peace,

Peace, and Refusal to pay Obedience to a Writ of *Habeas Corpus*.

The first of these Orders was made, after long Consideration, upon a Dispute with the King, when the Precedents of both Houses had been fully inspected, commented upon, reported, and entered in the Journals, and after the King's Counsel had been heard. It was made in sober Times, and by a House of Peers not only loyal, but devoted to the Crown; and it was made by the unanimous Consent of all, not one dissenting. These Circumstances of Solemnity, Deliberation, and Unanimity, are so singular and extraordinary, that the like are scarce to be found in any Instance among the Records of Parliament.

When the two Cases of Surety for the Peace and *Habeas Corpus* come to be well considered, it will be found that they both breathe the same Spirit, and grow out of the same Principle.

The Offences that call for Surety and *Habeas Corpus*, are both Cases of present continuing Violence; the Proceedings in both have the same End, *viz.* to repress the Force, and to disarm the Offender.

The Proceeding stops in both when that End is attained; the Offence is not prosecuted nor punished in either; the Necessity is equal in both, and if Privilege was allowed in either, so long as the Necessity lasts, a Lord of Parliament would enjoy a mightier Prerogative than the Crown itself is entitled to. Lastly, they both leave the Prosecution of all Misdemeanors still under Privilege, and do not derogate from that great Fundamental, that none shall be arrested, in the Course of Prosecution, for any Crime under Treason and Felony.

These two Orders comprize the whole Law of Privilege, and are both of them standiug Orders, and, consequently, the fixed Laws of the House,

by which we are all bound until they are duly repealed.

The Resolution of the other House, now agreed to, is a direct Contradiction to the Rule of parliamentary Privilege, laid down in the aforesaid standing Orders, both in Letter and Spirit. Before the Reasons are stated, it will be proper to premise two Observations:

1st, That in all Cases where Security of the Peace may be required, the Lord cannot be committed till that Security is refused, and, consequently, the Magistrate will be guilty of a Breach of Privilege if he commits the Offender without demanding that Security.

2dly, Although the Security should be refused, yet, if the Party is committed generally, the Magistrate is guilty of a Breach of Privilege, because the Party refusing ought only to be committed till he has found Sureties; whereas, by a general Commitment, he is held fast, even though he should give Sureties, and can only be discharged by giving Bail for his Appearance.

This being premised, the first Objection is to the Generality of this Resolution, which, as it is penn'd, denies the Privilege to the supposed Libeller, not only where he refuses to give Sureties, but likewise throughout the whole Prosecution, from the Beginning to the End; so that, although he should submit to be bound, he may, notwithstanding, be afterwards arrested, tried, convicted, and punished, sitting the Parliament, and without Leave of the House, wherein the Law of Privilege is fundamentally misunderstood, by which no Commitment whatsoever is tolerated, but that only which is made upon the Refusal of the Sureties, or in the other excepted Cases of Treason or Felony, and the *Habeas Corpus*.

If

If Privilege will not hold throughout in the Caſe of a ſeditious Libel, it muſt be becauſe that Offence is ſuch a Breach of the Peace, for which Sureties may be demanded; and if it be ſo, it will readily be admitted, that the Caſe comes within the Exception, "Provided always that Sureties have "been refuſed, and that the Party is committed "only till he ſhall give Sureties."

But, *Firſt*, This Offence is not a Breach of the Peace; it does not fall within any Definition of a Breach of the Peace, given by any of the good Writers upon that Subject; all which Breaches, from Menace to actual Wounding, either alone or with a Multitude, are deſcribed to be Acts of Violence againſt the Perſon, Goods, or Poſſeſſions, putting the Subject in Fear by Blows, Threats, or Geſtures. Nor is this Caſe of the Libeller ever enumerated in any of theſe Writers among the Breaches of Peace; on the contrary, it is always deſcribed as an Act tending to excite, provoke, or produce Breaches of the Peace; and although a Secretary of State may be pleaſed to add the enflaming Epithets of treaſonable, traiterous, or ſeditious, to a particular Paper; yet no Words are ſtrong enough to alter the Nature of Things. To ſay then, that a Libel, poſſibly productive of ſuch a Conſequence, is the very Conſequence ſo produced, is, in other Words, to declare, that the Cauſe and the Effect are the ſame Thing.

Secondly, But if a Libel could poſſibly, by any Abuſe of Language, or has any where been called, inadvertently, a Breach of the Peace, there is not the leaſt Colour to ſay, that the Libeller can be bound to give Sureties for the Peace, for the following Reaſons:

Becauſe none can be ſo bound unleſs he be taken in the actual Commitment of a Breach of

the Peace, ſtriking or putting ſome one or more of his Majeſty's Subjects in Fear:

Becauſe there is no Authority, or even ambiguous Hint, in any Law-book, that he may be ſo bound:

Becauſe no Libeller, in Fact, was ever ſo bound:

Becauſe no Crown Lawyer, in the moſt deſpotick Times, ever inſiſted he ſhould be ſo bound, even in Days when the Preſs ſwarmed with the moſt invenomed and virulent Libels, and when the Proſecutions raged with ſuch uncommon Fury againſt this Species of Offenders; when the Law of Libels was ranſacked every Term; when Loſs of Ears, perpetual Impriſonment, Baniſhment, and Fines of Ten and Twenty Thouſand Pounds, were the commoe Judgments in the Star-chamber, and when the Crown had aſſumed an uncontroulable Authority over the Preſs.

Thirdly, This Reſolution does not only infringe the Privilege of Parliament, but points to the Reſtraint of the perſonal Liberty of every common Subject in theſe Realms, ſeeing that it does, in Effect, affirm, that all Men, without Exception, may be bound to the Peace for this Offence.

By this Doctrine every Man's Liberty, privileged as well as unprivileged, is ſurrendered into the Hands of a Secretary of State: *He* is, by this Means, impowered, in the firſt Inſtance, to pronounce the Paper to be a ſeditious Libel, a Matter of ſuch Difficulty, that ſome have pretended, it is too high to be entruſted to a Special Jury, of the firſt Rank and Condition; *he* is to underſtand and decide by himſelf the Meaning of every *Inuendo*; *he* is to determine the Tendency thereof, and brand it with his own Epithets; *he* is to adjudge the Party guilty, and make him Author or Publiſher,

as

as he ſees good: And, laſtly, *he* is to give Sentence by committing the Party. All theſe Authorities are given to one ſingle Magiſtrate, unaſſiſted by Counſel, Evidence, or Jury, in a Caſe where the Law ſays, no Action will lie againſt him, becauſe he acts in the Capacity of a Judge.

From what has been obſerved it appears to us, that the Exception of a ſeditious Libel, from Privilege, is neither founded on Uſage or written Precedents, and therefore this Reſolution is of the firſt Impreſſion; nay, it is not only a new Law, narrowing the known and ancient Rule, but it is likewiſe a Law *ex poſt facto*, *pendente lite*, *& ex parte*, now firſt declared to meet with the Circumſtances of a particular Caſe; and it muſt be farther conſidered, that this Houſe is thus called upon to give a Sanction to the Determinations of the other, who have not condeſcended to confer with us upon this Point, till they had pre-judged it themſelves.

This Method of relaxing the Rule of Privilege, Caſe by Caſe, is pregnant with this farther Inconvenience, that it renders the Rule precarious and uncertain. Who can foretel where the Houſe will ſtop, when they have, by one Infringement of their own ſtanding Orders, made a Precedent, whereon future Infringements may, with equal Reaſon, be founded? How ſhall the Subject be able to proceed, with Safety, in this perilous Buſineſs? How can the Judges decide on theſe or the like Queſtions, if Privilege is no longer to be found in Records and Journals, and ſtanding Orders? Upon any Occaſion Privilege may be enlarged, and no Court will venture, for the future, without trembling, either to recognize or to deny it.

We manifeſtly ſee this Effect of excluding, by a general Reſolution, one bailable Offence from Privilege to-day, that it will be a Precedent for doing ſo by another, upon ſome future Occaſion, till, inſtead

inſtead of Privilege holding in every Caſe not excepted, it will, at laſt, come to hold in none but ſuch as are expreſsly ſaved.

When the Caſe of the *Habeas Corpus* is relied upon, as a Precedent to enforce the Declaration, the Argument only ſhews, that the Miſchief aforementioned has taken Place already, ſince one Alteration, though a very juſt one, not at all applicable to the preſent Queſtion, is produced to juſtify another that is unwarrantable.

But it is ſtrongly objected, that if Privilege be allowed in this Caſe, a Lord of Parliament might endanger the Conſtitution, by a continual Attack of ſucceſſive Libels; and if ſuch a Perſon ſhould be ſuffered to eſcape, under the Sheſter of Privilege, with perpetual Impunity, all Government would be overturned; and therefore it is inexpedient to allow the Privilege now, when the Time of Privilege, by Prorogations, is continued for ever, without an Interval.

This Objection ſhall be anſwered in two Ways. 1ſt, If Inexpediency is to deſtroy perſonal Privilege in this Caſe of a ſeditious Libel, it is at leaſt as inexpedient, that other great Miſdemeanors ſhould ſtand under the like Protection of Privilege; neither is it expedient that the ſmaller Offences ſhould be exempt from Proſecution in the Perſon of a Lord of Parliament; ſo that if this Argument of Inexpediency is to prevail, it muſt prevail throughout, and ſubvert the whole Law of Privilege in criminal Matters, in which Method of Reaſoning there is this Fault, that the Argument proves too much.

If this Inconvenience be indeed grievous, the Fault is not in the Law of Privilege, but in the Change of Times, and in the Management of Prorogations by the Servants of the Crown, which are ſo contrived, as not to leave an Hour open for Juſtice.

tice. Let the Objection, nevertheless, be allowed in its utmost Extent, and then compare the Inexpediency of not immediately prosecuting on one Side, with the Inexpediency of stripping the Parliament of all Protection from Privilege on the other. Unhappy as the Option is, the Publick would rather wish to see the Prosecution for Crimes suspended, than the Parliament totally unprivileged, although, notwithstanding this pretended Inconvenience is so warmly magnified on the present Occasion, we are not apprized that any such Inconvenience has been felt, though the Privilege has been enjoyed Time immemorial.

But the second and best Answer, because it removes all Pretence of Grievance, is this, that this House, upon Complaint made, has the Power (which it will exert in Favour of Justice) to deliver up the Offender to Prosecution.

It is a dishonourable and an undeserved Imputation upon the Lords, to suppose, even in Argument, that they would nourish an impious Criminal in their Bosoms, against the Call of offended Justice, and the Demand of their Country.

It is true, however, and it is hoped that this House will always see (as every Magistrate ought, that does not betray his Trust) that their Member is properly discharged; but when that Ground is once laid, they would be ashamed to protect the Offender one Moment: Surely this Trust (which has never yet been abused) is not too great to be reposed in the high Court of Parliament; while it is lodged there, the publick Justice is in safe Hands, and the Privilege untouched; whereas, on the contrary, if, for the Sake of coming at the Criminal at once, without this Application to the House, personal Privilege is taken away, not only the Offender, but the whole Parliament, at the same Time, is delivered up to the Crown.

It

It is not to be conceived, that our Anceſtors, when they framed the Law of Privilege, would have left the Caſe of a ſeditious Libel (as it is called) the only unprivileged Miſdemeanor. Whatever elſe they had given up to the Crown, they would have guarded the Caſe of ſuppoſed Libels, above all others, with Privilege, as being moſt likely to be abuſed by outrageous and vindictive Proſecutions.

But this great Privilege had a much deeper Reach; it was wiſely planned, and hath hitherto, through all Times, been reſolutely maintained.

It was not made to ſcreen Criminals, but to preſerve the very Being and Life of Parliament: For when our Anceſtors conſidered, that the Law had lodged the great Powers of Arreſt, Indictment and Information, in the Crown, they ſaw the Parliament would be undone, if, during the Time of Privilege, the Royal Proceſs ſhould be admitted in any Miſdemeanor whatſoever; therefore they excepted none. Where the Abuſe of Power would be fatal, the Power ought never to be given; becauſe Redreſs comes too late.

A Parliament, under perpetual Terror of Impriſonment, can neither be free, nor bold, nor honeſt; and if this Privilege was once removed, the moſt important Queſtion might be irrecoverably loſt, or, carried by a ſudden Eruption of Meſſengers, let looſe againſt the Members Half an Hour before the Debate.

Laſtly, As it has already been obſerved, The Caſe of ſuppoſed Libels is, of all others, the moſt dangerous and alarming to be left open to Proſecution during the Time of Privilege.

If the Severity of the Law, touching Libels, as it hath ſometimes been laid down, be duly weighed, it muſt ſtrike both Houſes of Parliament with Terror and Diſmay.

The

The Repetition of a Libel, the Delivery of it unread to another, is ſaid to be a Publication; nay, the bare Poſſeſſion of it has been deemed criminal, unleſs it is immediately deſtroyed, or carried to a Magiſtrate.

Every Lord of Parliament then, who hath done this, who is falſly accuſed, nay, who is, though without any Information, named in the Secretary of State's Warrant, has loſt his Privilege by this Reſolution, and lies at the Mercy of that Enemy to Learning and Liberty, the Meſſenger of the Preſs.

For theſe, and many other forcible Reaſons, we hold it highly unbecoming the Dignity, Gravity, and Wiſdom, of the Houſe of Peers, as well as their Juſtice, thus judicially to explain away and diminiſh the Privilege of their Perſons, founded in the Wiſdom of Ages, declared with Preciſion in our ſtanding Orders, ſo repeatedly confirmed, and hitherto preſerved inviolable by the Spirit of our Anceſtors, called to it only by the other Houſe, on a particular Occaſion, and to ſerve a particular Purpoſe, *ex poſt facto*, *ex parte*, *& pendente lite*, in the Courts below.

Temple,	*Devonſhire*,	*Forteſcue*,
Bolton,	*Scarborough*,	*Grantham*,
Grafton,	*Dacre*,	*Walpole*,
Cornwallis,	*Abergavenny*,	*Ponſonby*,
Portland,	*Fred. Litch. Cov.*	*Folkeſtone*,
Briſtol,	*Aſhburnham*,	

Die Mercurii 11° *Martii*, 1766.

The Order of the Day being read for the ſecond Reading of the Bill, intitled, *An Act to repeal an Act made in the laſt Seſſion of Parliament, intitled, An Act for granting and applying certain Stamp Duties and other Duties in the* Britiſh *Colonies and Plantations in* America, *towards further defraying the Expences of defending, protecting, and ſecuring the ſame, and for*

for amending ſuch Parts of the ſeveral Acts of Parliament relating to the Trade and Revenues of the ſaid Colonies and Plantations, as direct the Manner of determining and recovering the Penalties and Forfeitures therein mentioned.

Then the ſaid Bill was read a ſecond Time, and it being propoſed to commit the Bill, the ſame was objected to.

Contents	73	105	After a long Debate * thereupon, the Queſtion was put, Whether the ſaid Bill ſhall be committed?
Proxies	32		
Not Cont.	61	71	
Proxies	10		
Majority	34		It was reſolv'd in the Affirmative.

Diſſentient

1ſt, Becauſe, as this Houſe has in this Seſſion, by ſeveral Reſolutions, moſt ſolemnly aſſerted and declared, Firſt, " That the King's Majeſty, by " and with the Advice and Conſent of the Lords " Spiritual and Temporal, and Commons of " *Great Britain*, in Parliament aſſembled, had, " hath, and of Right ought to have, full Power " and Authority to make Laws and Statutes of " ſufficient Force and Validity to bind the Co- " lonies and People of *America*, ſubjects of the " Crown of *Great Britain*, in all Caſes whatſoever." Secondly, " That Tumults and Inſurrections of

* Speakers on the Second Reading.

Againſt the Bill.	For the Bill.
1. Earl of *Coventry*,	2. Duke of *Newcaſtle*,
3. Earl of *Sandwich*,	4. Duke of *Grafton*,
5. Earl of *Hallifax*,	6. Duke of *Richmond*,
9. Lord *Botetourt*,	7. Earl *Poulet*,
10. Earl of *Suffolk*.	8. Earl of *Pomfret*,
12. Lord *Lyttelton*,	11. Lord Chancellor,
14. Lord *Mansfield*,	13. Earl of *Shelburne*,
16. Lord Viſc. *Townſhend*,	15. Lord *Camden*.
17. Earl *Temple*,	
18. Duke of *Bedford*.	

" the

" the moſt dangerous Nature have been raiſed and " carried on in ſeveral of the *North American* Co- " lonies, in open Defiance of the Power and Dig- " nity of his Majeſty's Government, and in ma- " nifeſt Violation of the Laws and legiſlative Au- " thority of this Kingdom:" Thirdly, " That " the ſaid Tumults and Inſurrections have been " encouraged and inflamed, by ſundry Votes and " Reſolutions paſſed in ſeveral of the Aſſemblies " of the ſaid Provinces, derogatory to the Honour " of his Majeſty's Government, and deſtructive of " the legal and conſtitutional Dependency of the " ſaid Colonies, on the Imperial Crown and Par- " liament of *Great Britain:*" Which Reſolutions were founded on a full Examination of the Papers on our Table, manifeſting a Denial of the legiſlative Authority of the Crown and Parliament of *Great Britain*, to impoſe Duties and Taxes on our *North American* Colonies; and a criminal Reſiſtance there made to the Execution of the commercial and other Regulations of the Stamp Act, and of other Acts of Parliament: We are of Opinion, that the total repealing of that Law, eſpecially while ſuch Reſiſtance continues, would (as Governor *Barnarde* ſays is their Intention) " make the " Authority of *Great Britain* contemptible here- " after;" and that ſuch a Submiſſion of King, Lords, and Commons, under ſuch Circumſtances, in ſo ſtrange and unheard-of a Conteſt, would, in Effect, ſurrender their ancient, unalienable Rights of Supreme Juriſdiction, and give them excluſively to the ſubordinate Provincial Legiſlatures eſtabliſhed by Prerogative; which was never intended or thought of, and is not in the Power of Prerogative to beſtow; as they are inſeparable from the Three Eſtates of the Realm aſſembled in Parliament.

2*dly*, Be-

2dly, Because the Law, which this Bill now proposes to repeal, was passed in the other House with very little Opposition, and in this without one dissentient Voice, during the last Session of Parliament, which we presume, if it had been wholly and fundamentally wrong, could not possibly have happened; as the Matter of it is so important, and as the Intention of bringing it in had been communicated to the *Commons* by the first Commissioner of the Treasury the Year before; and a Resolution, relating and preparatory to it, was then agreed to in that House, without any Division.

3dly, Because, if any particular Parts of that Law, the Principle of which has been experienced and submitted to in this Country, without repining, for near a Century past, had been found liable to just and reasonable Objections, they might have been altered by a Bill to explain and amend it, without repealing the Whole. And, if any such Bill had been sent to us by the *Commons*, we should have thought it our Duty to have given it a most serious Consideration, with a warm Desire of relieving our Countrymen in *America* from any Grievance or Hardship; but with proper Care to enforce their Submission and Obedience to the Law so amended, and to the whole legislative Authority of *Great Britain*, without any Reserve or Distinction whatsoever.

4thly, Because it appears to us, that a most essential Branch of that Authority, the Power of Taxation, cannot be properly, equitably, or impartially exercised, if it does not extend itself to all the Members of the State, in Proportion to their respective Abilities; but suffers a Part to be exempt from a due Share of those Burthens which the publick Exigencies require to be imposed upon the Whole: A Partiality which is directly and manifestly repugnant to the Trust reposed by the

People

People in every Legislature, and destructive of that Confidence on which all Government is founded.

5thly, Because the Ability of our *North American* Colonies to bear, without Inconveniency, the Proportion laid on them by the Stamp Act of last Year, appears to us most unquestionable, for the following Reasons: First, That the estimated Produce of this Tax, amounting to Sixty Thousand Pounds *per Annum*, if divided amongst Twelve Hundred Thousand People (being little more than One Half of the Subjects of the Crown in *North America*), would be only One Shilling *per* Head a Year; which is but a Third of the Wages usually paid to every Labourer or Manufacturer there for One Day's Labour: Secondly, That it appears, by the Accounts that have been laid before this House from the Commissioners of Trade and Plantations, that of the Debt contracted by those Colonies in the last War, above 1,755,000 *l.* has already been discharged, during the Course of three Years only, by the Funds provided for that Purpose in the several Provinces; and the much greater Part of the remaining Incumbrance, which in the Whole is about 760,000 Pounds, will be paid in two Years more. We must likewise observe, that the Bounties and Advantages given to them by Parliament in 1764 and 1765, and the Duties thereby lost to *Great Britain* for their Service, and, in order to enable them the more easily to pay this Tax, must necessarily amount, in a few Years, to a far greater Sum than the Produce thereof. It is also evident, that such Produce being wholly appropriated to the Payment of the Army maintained by this Kingdom in our Colonies, at the vast Expence of almost a Shilling in the Pound Land Tax, annually remitted by us for their special Defence and Protection; not only no Money would have been actually drawn by it out of that Country, but the Ease given by

it to the People of *Great Britain*, who are labouring under a Debt of Seventy Millions, contracted by them to support a very dangerous War, entered into for the Interest and Security of those Colonies, would have redounded to the Benefit of the Colonies themselves in their own immediate Safety, by contributing to deliver them from the necessary Expence which many of them have hitherto always borne, in guarding their Frontiers against the savage *Indians*.

6thly, Because not only the Right, but the Expediency and Necessity of the Supreme Legislature's exerting its Authority to lay a General Tax on our *American* Colonies, whenever the Wants of the Publick make it fitting and reasonable that all the Provinces should contribute, in a proper Proportion, to the Defence of the Whole, appear to us undeniable, from these Considerations: First, That every Province being separate and independent on the others, and having no Common Council impowered by the Constitution of the Colonies to act for all, or bind all, such a Tax cannot regularly, or without infinite Difficulty, be imposed upon them, at any Time, even for their immediate Defence or Protection, by their own Provincial Assemblies; but requires the Intervention and superintending Power of the Parliament of *Great Britain*. Secondly, That in looking forwards to the possible Contingency of a new War, a Contingency perhaps not far remote, the Prospect of the Burthens, which the Gentry and People of this Kingdom must then sustain, in Addition to those which now lie so heavy upon them, is so melancholy and dreadful, that we cannot but feel it a most indispensible Duty, to ease them as much as is possible, by a due and moderate Exertion of that great Right which the Constitution of this Realm has vested in the Parliament, to provide for the Safety of

of all, by a proportionable Charge upon all, equally and indifferently laid. We likewise apprehend, that a partial Exemption of our Colonies from any Exercise of this Right, by the *British* Legislature, would be thought so invidious, and so unjust to the other Subjects of the Crown of *Great Britain*, as to alienate the Hearts of these from their Countrymen residing in *America*, to the great Detriment of the latter, who have on many Occasions received, and may again want Assistance, from the generous Warmth of their Affection.

7thly, Because the Reasons assigned in the publick Resolutions of the Provincial Assemblies, in the *North American* Colonies, for their disobeying the Stamp Act, *viz.* "That they are not represented in the Parliament of *Great Britain*," extends to all other Laws, of what Nature soever, which that Parliament has enacted, or shall enact, to bind them in Times to come, and must (if admitted) set them absolutely free from any Obedience to the Power of the *British* Legislature. We likewise observe, that in a Letter to Mr. Secretary *Conway*, dated the 12th of *October* 1765, the Commander in Chief of his Majesty's Forces in *North America* has declared his Opinion, "That the "Question is not of the Inexpediency of the Stamp "Act, or of the Inability of the Colonies to pay "the Tax; but that it is unconstitutional, and con- "trary to their Rights, supporting the Independ- "ency of the Provinces, and not subject to the "Legislative Power of *Great Britain*." It is, moreover, affirmed, in a Letter to Mr. *Conway*, dated the 7th of *November*, "That the People in "general are averse to Taxes of any Kind; and "that the Merchants of that Place think they "have a Right to every Freedom of Trade which "the Subjects of *Great Britain* now enjoy." This

Opinion of theirs strikes directly at the Act of Navigation, and other subsequent Laws, which from Time to Time have been made on the wise Policy of that Act; and should they ever be encouraged to procure for themselves that absolute Freedom of Trade which they appear to desire, our Plantations would become not only of no Benefit, but in the highest Degree prejudicial to the Commerce and Welfare of their Mother-country; Nor is it easy to conceive a greater Encouragement than the repealing of a Law, opposed by them on such Principles, and with so much Contempt of the Sovereignty of the *British* Legislature.

8*thly*, Because the Appearance of Weakness and Timidity in the Government and Parliament of this Kingdom, which a Concession of this Nature may too probably carry with it, has a manifest Tendency to draw on further Insults, and, by lessening the Respect of all his Majesty's Subjects to the Dignity of his Crown, and Authority of his Laws, throw the whole *British* Empire into a miserable State of Confusion and Anarchy, with which it seems, by many Symptoms, to be dangerously threatened. And this is the more to be feared, as the Plea of our *North American* Colonies, that, not being represented in the Parliament of *Great Britain*, they ought not to pay Taxes imposed or levied upon them by the Authority thereof, may, by the same Reasoning, be extended to all Persons in this Island, who do not actually vote for Members of Parliament: Nor can we help apprehending, that the Opinion of some Countenance being given to such Notions by the Legislature itself, in consenting to this Bill for the Repeal of the Stamp Act, may greatly promote the Contagion of a most dangerous Doctrine, destructive to all Government, which has spread itself over all our *North American* Co-

Colonies, that the Obedience of the Subject is not due to the Laws and Legislature of the Realm, farther than he, in his private Judgment, shall think it conformable to the Ideas he has formed of a free Constitution.

9thly, Because we think it no effectual Guard, or Security, against this Danger, that the Parliament has declared, in the Resolutions of both Houses, passed during this Session, and now reduced into a Bill, That such Notions are ill founded; as Men will always look more to Deeds than Words, and may therefore incline to believe that the Insurrections in our Colonies, excited by those Notions, having so far proved successful as to attain the very Point at which they aimed, the immediate Repeal of the Stamp Act, without any previous Submission on the Part of the Colonies; the Legislature has, in Fact, submitted to them, and has only more grievously injured its own Dignity and Authority by verbally asserting that Right which it substantially yields up to their Opposition. The Reasons assigned for this Concession render it still more alarming, as they arise from an illegal and hostile Combination of the People of *America* to distress and starve our Manufacturers, and to withhold from our Merchants the Payment of their just Debts; the former of which Measures has only been practised in open War between two States, and the latter, we believe, not even in that Situation, either by the Publick, or by Individuals, among the civilized Nations of *Europe*, in modern Times. If this unprecedented Plan of Intimidation shall meet with Success, it is easy to foresee that the Practice of it, for other and still greater Objects, will frequently be renewed, and our Manufacturers and Merchants reduced to the like, and more permanent Distress: We cannot, therefore,

but wish, that some more eligible Method, consistent with their future Safety, and our Dignity, had been taken by Parliament, to shew our tender Concern and Compassion for their Sufferings, and to discourage any other such unwarrantable Attempts; which, we are fully persuaded, would have been very practicable, with due Care and Attention, and at an Expence very inferior to the Importance of the Object.

Lastly, Because we are convinced, from the unanimous Testimony of the Governors, and other Officers of the Crown in *America*, that if, by a most unhappy Delay and Neglect to provide for the due Execution of the Law, and arm the Government there with proper Orders and Powers, repeatedly called for in vain, these Disturbances had not been continued and increased, they might easily have been quieted before they had attained to any dangerous Height; and we cannot, without feeling the most lively Sense of Grief and Indignation, hear Arguments, drawn from the Progress of Evils which should and might have been stopped in their first and feeble Beginnings, used for the still greater Evil of sacrificing to a present Relief the highest permanent Interests, and the whole Majesty, Power, and Reputation of Government. This afflicts us the more deeply, because it appears, from many Letters, that this Law, if properly supported by Government, would, from the peculiar Circumstances attending the Disobedience to it, execute itself, without Bloodshed. And it is said, in one of the Letters to Mr. Secretary *Conway*, "That the "principal View is to intimidate the Parliament; "but that if it be thought prudent to enforce their "Authority, the People dare not oppose a vi-"gorous Resolution of the Parliament of *Great* "*Britain*." That vigorous Resolution has not yet been

been found in the Parliament; and we greatly fear, that the Want of it will certainly produce one of these two fatal Consequences; either that the Repeal of this Law will, in Effect, annul and abrogate all other Laws and Statutes relating to our Colonies, and, particularly, the Acts that restrain or limit their Commerce, of which they are most impatient; or, if we should hereafter attempt to enforce the Execution of those Laws against their Will, and by Virtue of an Authority which they have dared to insult with Impunity and Success, that Endeavour will bring upon us all those Evils and Inconveniencies, to the Fear of which we now sacrifice the Sovereignty of the Realm, and this at a Time when the Strength or our Colonies, as well as their Desire of a total Independence on the Legislature and Government of their Mother-country, may be greatly augmented; and when the Circumstances and Dispositions of the other Powers of *Europe* may render the Contest far more dangerous and formidable to this Kingdom.

Bedford,
Coventry,
Bridgewater,
Temple,
Buckingham,
Wentworth,
Sandwich,
Bolingbroke,
Marlborough,
W. Gloucester,
Ker,
Leigh,
Bangor,
Waldegrave,
Aylesford,
Gower,
Weymouth,
Scarsdale,
Lyttelton,
Dunk Hallifax,
Eglingtoun,
Suffolk and Berkshire,
Abercorn,
Vere,
Trevor,
Thomas Bristol,
Ferrers,
Grosvenor,
Townshend,
Dudley and Ward,
Charles Carlisle,
Powis,
Hyde.

Veneris, 21° *Die Februarii*, 1766.

Question,

That it is the Opinion of this Committee, That the House be moved, that Leave be given to bring in

A Correct LIST of the LORDS who Voted against the Repeal of the *American* Stamp Act, March 10, 1766.

His Royal Highness the Duke of YORKE, *First Brother to the King*
Duke of Beaufort
Duke of Bedford
Duke of Marlborough
Duke of Ancaster, *Master of the Horse to the Queen*
Duke of Bridgewater
Earl of Pembroke, *Col. of the first Regiment of Dragoons*
Earl of Suffolk and Berkshire
Earl of Denbigh, *a Lord of the King's Bedchamber*
Earl of Sandwich
Earl of Lichfield, *Captain of the Band of Pensioners*, &c.
Earl of Coventry, *a Lord of the King's Bedchamber*
Earl of Oxford, *a Lord of the King's Bedchamber*
Earl Ferrers, *a Captain in the Royal Navy*
Earl of Aylesford
Earl of Hallifax
Earl of Macclesfield
Earl Ker (Duke of Roxburgh in Scotland)
Earl Waldegrave, *Governor of* Plymouth, *and Col. of the second Regiment of Dragoons*
Earl of Orford, *a Lord of the King's Bedchamber, and Ranger of St. James's and Hyde Parks*
Earl of Warwick
Earl Gower
Earl of Buckinghamshire, *Lord of the King's Bedchamber*
Earl of Powis
Earl of Northumberland, *Vice Admiral of all America*
Earl Temple
Earl Harcourt, *Chamberlain to the Queen*
Earl of Guildford
Earl Talbot, *Steward of the King's Houshold*
Viscount Say and Sele
Viscount Townshend, *Lieutenant General of the Ordnance, and Colonel of the 28th Regiment of Foot*
Viscount Weymouth
Viscount Bolingbroke
Viscount Wentmorth
Viscount Dudley and Ward
Lord Le Despencer
Lord Botetourt
Lord Leigh
Lord Byron
Lord Trevor
Lord Montfort
Lord Vere
Lord Hyde
Lord Mansfield, *Chief Justice of the King's Bench*
Lord Lyttelton
Lord Grosvenor

Lord

in a Bill to Repeal an Act passed in the last Session of Parliament, intitled, *An Act for granting and applying*

Lord Scarsdale
Lord Beaulieu
Earl of Eglintoun, *a Lord of the King's Bedchamber*
Earl of Abercorn
Earl of Loudon, *Governor of Edinburgh Castle, and Col. of the 30th Regiment of Foot*
Earl of March, *a Lord of the King's Bedchamber*
Earl of Bute, *Ranger of Richmond Park*
Lord Cathcart, *first Lord of Police in Scotland*
Bishop of Durham
Bishop of Chester
Bishop of Rochester
Bishop of Bangor
Bishop of Gloucester
Bishop of Carlisle
Bishop of Bristol

Proxies.

Duke of Cleveland, *Comptroller of the Seal, &c.*
Earl of Essex
Earl of Tankerville
Earl of Darlington, *Master of the Jewel Office, and Governor of Carlisle*
Lord Craven
Lord Fortescue
Lord Vernon
Earl of Sutherland, *Col. of a Bat. of Highlanders*
Earl of Rothes, *Col. of the 3d Regiment of Foot-guards, Governor of Duncannon, &c.*
Bishop of Hereford.

A Correct LIST of the Members of the House of Commons, who voted against the Bill to Repeal the *American Stamp Act*.

J. Abercrombie, Esq; — Clackmannanshire
Edward Bacon, Esq; — Norwich
William Baggott, Esq; — Staffordshire
Sir Richard Warwick Bampfylde, Bart. — Devonshire
Lord Barrington, *Secretary at War* — Plymouth
Lord Bateman, *Master of the Buckhounds* — Woodstock
Lord Robert Bertie, *a Lord of the King's Bed-chamber, a Lieutenant General, Governor of Cork, and Colonel of the 7th Regiment of Foot* — Boston
Lord Brownlow Bertie — Lincolnshire
Peregrine Bertie, Esq; — Westbury
William Blackstone, Esq; *Solicitor General to the Queen* — Hindon
Sir Walter Blackett, Bart. — Newcastle-upon-Tyne
Richard Wilbraham Bootle, Esq; — Chester
Thomas Brand, Esq; — Gatton
William Bromley, Esq; — Warwickshire

Hon.

applying certain Stamp Duties, and other Duties in the British Colonies and Plantations in America, towards

n. Robert Brudenel, Esq; *a Groom of the Bed-chamber to the Duke of York, and Colonel of the Fourth Regiment of Foot, and,* lately made, *Vice Chamberlain to the Queen*	Marlborough
Sir Thomas Charles Bunbury, Bart.	Suffolk
Sir Robert Burdett, Bart.	Tamworth
John Burgoyne, Esq; *Colonel of the 16th Regiment of Dragoons*	Midhurst
William Matt. Burt, Esq;	Marlow
Hon. Charles Sloane Cadogan, Esq; *Surveyor of his Majesty's Waters, and Treasurer to the Duke of York*	Cambridge Town
Right Hon. Lord Frederick Campbell	Glasgow, Renfrew, &c.
James Campbell, Esq; *Governor of Stirling Castle*	Stirlingshire
Marquis of Carnarvon	Radnorshire
Lord Carysfort	Huntingdonshire
Timothy Caswell, Esq;	Hertford
Earl of Catherlough	Grimsby
Richard Clive, Esq;	Montgomery
James Edward Colleton, Esq;	Leftwithiel
Sir John Hynd Cotton	Cambridgeshire
Tho. Coventry, Esq; *a Director of the South Sea Company*	Bridport
Patrick Crauford, Esq;	Renfrewshire
Asheton Curzon, Esq;	Clitheroe
Sir Hugh Dalrymple, Bart.	Dunbar, &c.
Sir James Dashwood, Bart.	Oxfordshire
Sir John Hussey Delaval, Bart.	Berwick
John Dickson, Esq;	Peeblesshire
Sir James Douglass, *Admiral of the White*	Orkney, &c.
Archibald Douglass, Esq; *a Lieutenant General, and Col. of the 13th Regiment of Dragoons*	Dumfriesshire
William Drake, Esq:	Amersham
Thomas Erle Drax, Esq;	Wareham
Sir Lawrence Dundass, Bart,	Newcastle-under-line
Thomas Dundass, Esq;	Richmond
Thomas De Grey, Esq;	Norfolk
Jeremiah Dyson, Esq; *one of the Lords of Trade*	Yarmouth, Hants
John Eames, Esq; *one of the Masters in Chancery*	Yarmouth, Hants
Archibald Edmonstone, Esq;	Dumbartonshire

Right

wards further defraying the Expences of defending, protesting, and securing the same, and for amending such

Right Hon. Gilbert Elliot, Esq; *Treasurer of the Chamber* — Roxburghshire
Right Hon. Welbore Ellis — Aylesbury
Simon Fanshawe, Esq; *a Comptroller of the Board of Green Cloth* — Grampound
Sir Charles Farnaby, Bart. — East Grinstead
Earl of Farnham — Taunton
Thomas Foley, Esq; — Droitwich
Alexander Forrester, Esq; — Oakhampton
Colonel Fraser — Invernasshire
Lord Garlies — Morpeth
Bamber Gascoigne, Esq; — Midhurst
Thomas Gilbert, Esq; *Comptroller of the King's Wardrobe* — Newcastle-under-line
Sir John Glynne, Bart. — Flint Town
Lord Adam Gordon, *Col. of 66th Reg. of Foot* — Aberdeenshire
The Marquis of Granby, *Master of the Ordnance, and Col. of the Royal Reg. of Horse Guards Blue* — Cambridgeshire
Sir Alexander Grant, Bart. — Fortrose, &c.
Charles Gray, Esq; — Colchester
David Græme, Esq; *Secretary to the Queen, a Major General, and Colonel of the 49th Regiment of Foot* — Perthshire
Right Hon. George Grenville, Esq; — Buckingham Town
Thomas Grosvenor, Esq; — Chester
Howell Gwynne, Esq; — Old Sarum
John Hamilton, Esq; *Master of the King's Works in Scotland* — Wigtown, &c.
William Gerrard Hamilton, Esq; *Chancellor of the Exchequer in Ireland* — Pontefract
Hon. Thomas Harley, Esq; — London
Sir Henry Harpur, Bart. — Derbyshire
James Harris, Esq; — Christchurch
Eliab Harvey, Esq; *King's Counsel* — Dunwich
Edward Harvey, Esq; *a Major General, Colonel of the 3d Regiment of Light Horse, and Adjutant General in North America* — Gatton
George Hay, L. L. D. *Dean of the Arches Court, And Judge of the Prerogative Court of Canterbury* — Sandwich
Edward Herbert, Esq; — Ludlow
Lord Hinchingbrooke — Brackley

Hon.

such Parts of the several Acts of Parliament relating to the Trade and Revenues of the said Colonies and Plantations, as direct the Manner of Determining and Reco-

Hon. George Hobart, Esq; — Beeralston
Francis Holbourne, Esq; *Vice Admiral of the Red* — Dumfarling, &c.
Rowland Holt, Esq; — Suffolk
Jacob Houblon, Esq; — Hertfordshire
Hon. Thomas Howard, Esq; — Castle Rising
Thomas Orby Hunter, Esq; — Winchelsea
William Hussey — St. Germans
Charles Jenkinson, Esq; *Auditor of Accompts to the Princess Dowager of Wales* — Cockermouth
John Jolliffe, Esq; — Petersfield
Robert Jones, Esq; — Huntingdon
Anthony Keck, Esq; — Woodstock
Edward Kynaston, Esq; — Montgomeryshire
Peter Legh, Esq; — Ilchester
Marquis of Lorne, *a Lieutenant General, and Colonel of the First Regiment of Foot* — Dover
Richard Lowndes, Esq; — Buckinghamshire
Sir James Lowther, Bart. — Cumberland
Sir Herbert Lloyd, Bart. — Cardigan Town
Simon Luttrell, Esq; — Wigan
William Lynch, Esq; — Wenlock
John Ross Mackye, Esq; *Paymaster of the Ordnance* — Kircudbright
Alex. Mackey, Esq; *Col. of the 65th Regiment of Foot* — Sutherlandshire
Right Hon. James Stuart Mackenzie, Esq; — Rossshire
Lord Robert Manners, *Col. of the 3d Regiment of Dragoons, and Lieutenant Governor of Hull* — Kingston upon Hull
John Manners, Esq; *Housekeeper at Whitehall* — Newark
Samuel Martin, Esq; *Treasurer to the Princess Dowager of Wales* — Camelford
Paul Methuen, Esq; — Warwick
Right Hon. Thomas Millar, Esq; *Lord Advocate for Scotland* — Anan Sanquhair, &c.
Thomas Moore Molyneux, Esq; *a Captain in the 3d Regiment of Foot Guards* — Haslemere
Hon. Archibald Montgomery, Esq; *Equerry to the Queen, Governor of Dumbarton Castle, and Deputy Ranger of St. James's and Hyde Parks* — Airshire

Sir

Recovering the Penalties and Forfeitures therein mentioned.

It

Sir John Mordaunt, *a General of his Majesty's Forces, Colonel of the 10th Regiment of Dragoons, and Governor of Sheerness* — Cockermouth
Sir Charles Mordaunt, Bart. — Warwickshire
John Morton, Esq; *Chief Justice of Chester* — Abingdon
John Mostyn, Esq; *Groom of the Bedchamber to the King, Colonel of the first Regiment of Dragoon Guards, and a Lieutenant General* — Malton
Lord Mountstuart — Bossiney
Richard Neville Neville, Esq; — Tavistock
Sir Roger Newdigate, Bart. — Oxford University
Lord North — Banbury
Sir Fletcher Norton — Wigan
Right Hon. Robert Nugent, Esq; — Bristol
Edmund Nugent, Esq; *Groom of the Bedchamber to the King, and Captain in the first Regiment of Foot Guards* — St. Maws
Robert Henley Ongley, Esq; — Bedfordshire
Lord Orwell — Ipswich
Right Hon. James Oswald, Esq; *Joint Vice Treasurer of Ireland* — Kinghorn, &c.
Earl of Panmure, *a Lieut. General, and Colonel of the 21st Regiment of Foot* — Forfarshire
Armstead Parker, Esq; — Peterborough
Thomas Pitt, Esq; — Old Sarum
Sir George Pococke, *Admiral of the Blue* — Plymouth
George Prescott Esq; — Stockbridge
George Rice, Esq; *a Lord of Trade* — Carmarthenshire
John Robinson, Esq; — Westmoreland
John Lockhart Ross, *a Captain in the Royal Navy* — Peeblesshire
Lord George Sackville, *Joint Vice Treasurer of Ireland* — Hythe
Hon. Henry Saint John, *Groom of the Bedchamber to the Duke of York, and a Lieutenant Colonel* — Wotton Basset
Sir John Sebright, Bart. *a Major General, and Colonel of the 18th Regiment of Foot* — Bath
Henry Seymour, Esq; — Totness
Fane William Sharpe, Esq; — Callington
Jenniſon Shaftoe, Esq; — Leominster
Henry Shiffner, Esq; — Minehead
James Shuttleworth, Esq; — Lancashire
Coningsby Sibthorpe, Esq; — Lincoln

Lord

It was afterwards proposed to leave out the Word *Repeal*, and insert *Explain and amend*.

The Question was put, Whether the Word *Repeal* should remain?

Lord Charles Spencer, *Verdurer of Whichwood Forest*	Oxfordshire
Right Hon. Hans Stanley, Esq; *Governor of the Isle of Wight*	Southampton
Sir Thomas Stapleton, Bart.	Oxford City
John Stevenson, Esq; *a Director of the East India Company*	St. Michael
Sir Simeon Stuart, Bart. *a Chamberlain of the Exchequer*	Hampshire
Lord Strange, *Chancellor of the Duchy of Lancaster*	Lancashire
Lord George Sutton	Grantham
Marquis of Tavistock	Bedfordshire
Earl of Thomond	Minehead
Thomas Thoroton, Esq; *Secretary to the Master of the Ordnance*	Newark
John Pugh Pryse, Esq;	Cardiganshire
Edward Thurlowe, Esq; *King's Counsel*	Tamworth
Hon. Henry Fred. Thynne	Weobly
Sir John Turner, Bart.	King's Lynn
Sir Charles Kemys Tynte	Somersetshire
Arthur Vansittart, Esq;	Berkshire
Richard Vernon, Esq;	Bedford
John Upton, Esq;	Westmoreland
Charles Walcott, Esq;	Weymouth and Melcomb
Robert Waller, Esq;	Chipping Wycomb
John Rolle Walter, Esq;	Exeter
Henry Wauchope, Esq; *Deputy Privy Purse to his Majesty*	Bute and Caithness
Hon. John Ward, Esq;	Worcestershire
Lord Warkworth, *Aid de Camp to the King*	Westminster
Philip Carteret Webb, Esq;	Haslemere
Alexander Wedderburn, *King's Counsel*	Rothesay, &c.
Thomas Whately, Esq;	Luggershall
Hon. Thomas Willoughby, Esq;	Nottinghamshire
Sir Armine Wodehouse, Bart.	Norfolk
Robert Wood, Esq;	Brackley
167 Thomas Worsley, Esq; *Surveyor of the Board of Works*	Orford
168 Right Hon. Richard Rigby, Esq; *Teller*	Tavistock

Ayes

Ayes 275
Noes 167

Teller for the Ayes, Mr. *Tho. Townshend*, Jun.
For the Noes, Mr. *Rigby*.

Then the main Question was put, and agreed to.

Die Lunæ, 17° *Martii*, 1766.

The Order of the Day being read for the Third Reading of the Bill intitled, *An Act to repeal an Act made in the last Session of Parliament*, intituled, *An Act for granting and applying certain Stamp Duties, and other Duties in the* British *Colonies and Plantations in* America, *towards further defraying the Expences of defending, protecting, and securing the same, and for amending such Parts of the several Acts of Parliament relating to the Trade and Revenues of the said Colonies and Plantations, as direct the Manner of Determining and Recovering the Penalties and Forfeitures therein mentioned.*

Then the said Bill was read a third Time, and it being proposed to pass the Bill, the same was objected to.

After some Debate thereupon, the Question was put, Whether the said Bill shall pass?

It was resolved in the Affirmative *.

Dissentient

1*st*, Because we think that the Declaratory Bill, we passed last Week, cannot possibly obviate the growing Mischiefs in *America*, where it may seem calculated only to deceive the People of *Great Britain*, by holding forth a delusive and nugatory Affirmance of the Legislative Right of this Kingdom, whilst the enacting Part of it does no more

* Speakers on the Third Reading.

Against the Repeal.	For the Repeal.
1. Lord *Lyttelton*.	4. Duke of *Newcastle*.
2. Earl of *Bute*.	
3. Earl *Gower*.	

than

than abrogate the Resolutions of the House of Representatives in the *North American* Colonies, which have not in themselves the least Colour of Authority; and declares that, which is apparently and certainly criminal, only null and void.

2*dly*, Because the particular Objections which have been made to the Stamp Act in *North America*, and which have been adopted in the Course of the Debates upon this Bill for repealing it, are, in Fact, contradicted by undeniable Evidence upon our Table: It having been urged, First, That all the Money to be collected by this Tax was to be annually remitted hither, and that the *North American* Colonies would thereby be drained of all their Specie; and, Secondly, That the Institution of Vice Admiralty Courts in those Colonies, for the Recovery of Penalties upon Revenue Laws without Juries, is a novel Practice, by Means of which his Majesty's Subjects, in those Dominions, "would "be deprived of one of their most valuable Li-"berties, Trials by Juries, and in this Respect "distinguished from their Fellow Subjects in "*Great Britain*;" and would likewise be liable to the greatest Inconvenience, Vexation, and Injustice, through the Option left to any Prosecutor to call them from one End of that extensive Continent to the other; and through the Temptation to the Judge, to condemn rather than to acquit, from his being paid by Poundage of the Condemnation-money: Whereas, with Regard to the first of these Objections, it appears, by the Minute of the late Board of Treasury laid before this House, and dated on the 9th Day of *July* last, that the fullest Directions had been sent to the several Officers of the Revenue, "that, in order to obviate the In-"convenience of bringing into this Kingdom the "Money to be raised by the Stamp Duties, all the "Produce of the *American* Duties arising or to "arise,

arise, by Virtue of any *British* Act of Parliament, should, from Time to Time, be paid to the Deputy Pay-master in *America*, to defray the Subsistence of the Troops, and any military "Expences incurred in the Colonies:" And, with Regard to the second Objection, it is manifest, from sundry Acts of Parliament, that a Jurisdiction has been assigned to the Judges of those Courts, for the Recovery of Penalties upon the Laws of Revenue, and of Trade, without Juries, for near a Century past, from the Consideration (as we apprehend) that, in some of the Colonies, they are the only Judges not elected by the People: And so far it is from being true, that the Subjects in *North America*, by being deprived, in these Cases, of Trials by Juries, were, in that Respect, distinguished from their Fellow-subjects in *Great Britain*; that, in this very Instance of the Stamp Duties, the Penalties, which by the *American* Stamp Act were made recoverable without a Jury before a Judge of the Vice Admiralty Court, are, by the Laws now in Force for collecting the Stamp Duties in *Great Britain*, recoverable also without a Jury, before two Justices of the Peace, with the like Powers in both Cases, which we earnestly wish were not still more necessary for the Collection of the Publick Revenue in *America* than in *Great Britain*; and which we should be most desirous, if possible, to alleviate in both Countries. With this View, and to take away all just Occasion for Discontent, we were very glad to find, by the Representation from the late Commissioners of the Treasury to his Majesty in Council, dated on the 4th Day of *July* last, that the strictest Attention had been given by that Board, to prevent the Inconvenience and Injustice above mentioned; by a Plan to establish three different Courts of Vice Admiralty at the most convenient Places, with proper Districts annexed to each; and to give the Judges sufficient and honourable

honorable Salaries in Lieu of all Boundage and Fees whatsoever. But we cannot observe, without the highest Concern and Surprize, that this Representation, founded upon a Clause inserted in the Stamp Act for this very Purpose, and expressly calculated to relieve his Majesty's Subjects in *North America* from many unnecessary Hardships and Oppressions, to which they are now liable by many other Laws, still subsisting, should be totally disregarded for several Months, and be suffered to remain unexecuted in every Part of it, even to this Day; and that no Notice whatever should be taken, in any of the Dispatches from the present Administration to the Governors of the Colonies in *North America*, of the timely Care which had been employed to obviate the Objections raised on both these Heads; especially as it is notorious, that the Measures to be pursued, in Consequence of that Minute and Representation, had been fully opened and approved in Parliament, at the Time when the Stamp Act was proposed; and as the total Neglect of it has given Occasion to great Clamour and Dissatisfaction in the Colonies. We cannot help further observing, that as the Stamp Act was not to take Place till the First of *November*, if the Parliament had been called early, their Determinations, either for enforcing or repealing that Law, would, probably, have delivered the Merchants and Manufacturers here from all the Difficulties and Distress to which they have been, for so many Months, exposed: Nor would the Disorders in *America*, where all Government is prostrate, have risen to so great a Height, or taken so deep a Root.

3*dly*, Because the Argument which has been used in Favour of this Bill of Repeal, that the Experiment of the Stamp Act has been tried, and has failed, is extremely ill founded; as it manifestly appears, from the whole Tenor of the Papers

laid

laid before us, that if this Experiment had been properly tried, with the same Zeal for its Success with which it was first proposed, it would not have failed in any of the Colonies: And that this was the Opinion of the greater Part of the Governors in *North America*, and of many of the most intelligent and respectable Persons in those Provinces, for some Time after this Act was passed, is evident, beyond a Doubt, from the Letters of the former, now upon our Table, and from the latter having applied for, and accepted the Office of Distributors of the Stamps under that Act, which they certainly would not have done, and thereby have exposed their Lives and Fortunes to the Violence and Outrages which they have since undergone, if they had then thought the Success of this Measure in any Degree precarious: Nor have we heard of any Impracticability attending this Law in *Jamaica* and *Barbadoes*, and some other of the *West India* Islands, or in those of our Colonies in *North America*, where it has been executed.

4thly, Because a Precedent of the two Houses of Parliament lending their Power, from Motives of Fear or Impatience under a present Uneasiness, to overturn, in one Month, a Plan of Measures undertaken with their warmest Approbation and Concurrence, after the most mature Deliberation of two Years together, for the Improvement of our Revenue, and the Relief of our People, will effectually discourage all Officers of the Crown in *America* from doing their Duty, and executing the Laws of this Kingdom; and is enough to deter future Ministers, in any Circumstances of Distress or Danger to their Country, from opposing their Fortitude and Zeal for the Service of the Publick, to strong Combinations of private and particular Interests, to the Clamour of Multitudes, or the Malice of Faction; which must necessarily bring on such a Weakness and Pusillanimity in the Administration

of Government, as will soon end in the Downfall and Ruin of the State.

Lastly, Because the Repeal of this Law, under the present Circumstances, will, we fear, not only surrender the Honour and essential Interests of the Kingdom now and for ever, both at Home and Abroad, but will also deeply affect the fundamental Principles of our Constitution: For if we pass this Bill, against our Opinion, from the Threats and Compulsion publickly avowed in our Colonies, and enforced by the most unjustifiable Means within *Great Britain*, we disclaim that Legislative Authority over the Subjects, which we own ourselves unable to maintain. If we give our Consent to it here, without a full Conviction that it is right, merely because it has passed the other House, by declining to do our Duty on the most important Occasion which can ever present itself, and where our Interposition, for many obvious Reasons, would be peculiarly proper, we, in Effect, annihilate this Branch of the Legislature, and vote ourselves useless. Or, if by passing this Bill, we mean to justify those who in *America*, and even in *Great Britain*, have treated a Series of *British* Acts of Parliament as so many Acts of *Tyranny and Oppression*, which it is scarcely criminal to resist; or those Officers of the Crown, who, under the Eye, and with the Knowledge of Government, have taken upon themselves, whilst the Parliament was sitting, without its Consent, to suspend the Execution of the Stamp Act, by admitting Ships from the Colonies, with unstamped Clearances, to an Entry, in direct Violation of it, which, from the Papers upon our Table, appears to have been done; we shall then give our Approbation to an open Breach of the first Article of that great *Pallàdium* of our Liberties, the Bill of Rights; by which it is declared, " That the pretended Power of suspending " of Laws, or the Execution of Laws, by regal " Authority,

"Authority, without Consent of Parliament, is "illegal." Lastly, If we ground our Proceedings upon the Opinion of those who have contended in this House, that from the Constitution of our Colonies they ought never to be taxed, even for their own immediate Defence, we fear that such a Declaration, by which near a Fifth Part of the Subjects of *Great Britain*, who, by the Acts of Parliament to restrain the Pressing of Seamen in *America*, are already exempted from furnishing Men to our Navy, are to be for ever exempted from contributing their Share towards their own Support in Money likewise, will, from the flagrant Partiality and Injustice of it, either depopulate this Kingdom, or shake the Basis of Equality, and of that original Compact upon which every Society is founded: And as we believe that there is no Instance of such a permanent Exemption of so large a Body of the Subjects of any State, in any History, ancient or modern, we are extremely apprehensive of the fatal Consequences of this unhappy Measure; to which, for these Reasons, in Addition to those contained in the Protest of the 11th of this Month, our Duty to the King, and Justice to our Country, oblige us to enter this our Solemn Dissent.

Temple,	*Scarsdale*,	*Trevor*,
Abercorn,	*J. Bangor*,	*Hyde*,
Marlborough,	*Dudley and Ward*,	*Ker*,
Sandwich,	*Suffolk and Berkshire*,	*Lyttelton*,
Charles Carlisle,	*Leigh*,	*Essex*,
Weymouth,	*Bridgewater*,	*Ferrers*,
Thomas Bristol,	*Gower*,	*Aylesford*,
W. Gloucester,	*Grosvenor*,	*Vere*,
Buckinghamshire,	*Powis*,	*Eglintoun*.
R. Duresme,		

Die Veneris, 30 *Aprilis*, 1767.

Hodie secunda vice lecta est billa, intitled, *An Act to enable his Majesty to settle certain Annuities on their*

Royal Highnesses the Dukes of York, Gloucester, *and* Cumberland.

It was resolved in the Affirmative.

Dissentient, *Temple*.

Die Veneris, 26° *Junii*, 1767.

[Against the passing a Bill for rescinding the Dividend of the East-India Company, voted by a General-Court on the 6th of May, 1767, and confirmed by three several General-Courts, held afterwards.]

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Not Contents 44.

Dissentient,

1*st*, Because the Bill containing, in appearance, nothing but matter of future regulation, is so contrived as to operate retrospectively, and rescind a Dividend actually declared by a General Court of the East-India Company on the 6th of May last, of 6 $\frac{1}{4}$ per cent. for one half year, ending at Christmas next. This was, in the argument, avowed to be the principal object of the Bill; though the bill itself does not even mention that act, or suggest any reason for rescinding it. And we conceive, that if the measure had been substantially right, yet this manner of doing it, is unbecoming the dignity of Parliament; which should, in all cases, go openly and directly to its object.

2*dly*, Because this measure appears to us to be as exceptionable in the substance as in the form; being an *ex post facto* law, rescinding a legal act of the Company, in the exercise of their dominion over their own property; notwithstanding their application and earnest entreaties to the contrary; and without necessity or occasion from any consideration of private justice or public utility.

3*dly*, Because, considering the East-India Company as an national object, and the members of it as

as bound to attend to the interest of the public, as well as their own, the Dividend they had voted, and which is by this Bill to be rescinded, appears to be liable to no objection; for the only legal restriction on the Company's power to divide, is, "that the sum total of all the debts which they shall owe, do not exceed the value of the principal or capital stock or stocks, which shall be and remain undivided;" and it appears by the clearest evidence, that the Company's effects are amply sufficient, not only to discharge every just demand, but that, after even repaying their capital, there will remain a very great surplus.

4*thly*, Because it appears also to us, that the Dividend declared on the 6th of May is expedient; for the Dividend being in fact the only medium whereby to fix and compute the price of the stock, as between buyer and seller, justice to both requires such a Dividend as will fix that price as near as may be to the real value. And the Dividend of 12 $\frac{1}{2}$ is in that respect preferable to a Dividend of 10 per cent. to which this Bill has arbitrarily restrained it.

5*thly*, Because it appears to us to have been a Dividend regularly declared; the objections which have been made to it upon this head being manifestly void of all foundation. We admit, that the Court did proceed without an account actually before them; but the want of this account, so far as relates to the propriety of the Dividend, appears to have been sufficiently supplied. The Directors, in their negotiations with the government, and their declarations at former Courts, had themselves proposed such a Dividend, and acknowledged the ability of the Company to make it. The Proprietors, by these and other means, had full reason to be satisfied of that ability. And the account now produced, examined, and proved, does fully

 warrant

warrant their proceedings, and verify the ideas they then entertained and acted on.

6*thly*, Because the Dividend appears to have been voted by a very numerous Court, and so nearly unanimous, that no ballot was taken, because none was demanded; and no ballot was demanded, because there was not a competent member of Proprietors who disapproved the measure; and though, for that reason, the sense of the numbers present only was taken by holding up of hands, it now appears to be beyond a doubt, the confirmed deliberate sense of the Company; having been reconsidered at no less than three subsequent Courts, convened for the purpose of concerting the proper measures to support it; at the two last of which the votes of the Company at large were taken by a regular ballot; and the Dividend previously voted, was approved and ratified by a large majority. To the validity of the act; of the 6th of May no objection could be supported, though attempted. It was clearly a valid act; and if not valid, the Bill to rescind it would be necessary, for the act of itself would be void.

7*thly*, Because every argument used to shew the impropriety of dividing 12 ½ applies with equal force to a Dividend of 10 per cent. (which the Bill allows,) and indeed to any dividend at all; and would, if admitted to be a proper ground for rescinding this Dividend, be equally so for rescinding every Dividend the Company has ever made, or probably will ever make. For it is hardly possible, that during the existence of the Company, their debts can be actually paid off, or their cash in hand suffice to discharge those debts, and pay a Dividend, and at the same time the trade be carried on to that extent, as will yield to the Company and the public the most ample returns. The whole argument in favour of the Bill being reduced to these two propositions; that the Company ought

10

to discharge its debts before a Dividend can be allowed to take place; and that a Dividend ought to be made upon a cash account; principles contradicted by the uniform practice of the Company from its commencement.

Thirdly, Because this Bill cannot be meant for the interest either of the Company's creditors, or of the Proprietors; for it is observable, that the latter, as far as they may be supposed to understand, and may be permitted to judge of their own interests, entertain, and have strenuously expressed a very different sense of that matter. And as to the Creditors, it is remarkable, that none of them appear to have called for their money; nor have any of them, by any petition to this House, or otherwise, made any complaint, or signified any desire of such an interposition in their favour. On the contrary, it appeared on evidence, from the cross-examination of the principal witness for the Bill, that so far from doubting of the sufficiency of the security, the greatest evil the Company's Bond creditors apprehend is, the being paid off; and that their bonds, which some time since bore an high premium, though they carry only 3 per cent. bear at present a premium considerably lower, merely from that apprehension.

Fourthly, Because a legislative interposition controulling the Dividend of a trading Company, legally voted and declared by those to whom the power of doing it is intrusted, and to whom there is no ground to impute an abuse of that power, and who lent their money to the public upon the express stipulation, that they might exercise their discretion with regard to the Dividend's, provided their effects, undivided, were sufficient to answer their debts; is altogether without example. And, as it tends to lessen the idea of that security and independence of the power of the state, which have induced all Europe to deposite their money

in

order to find a pretence, however insufficient, for this limitation.

13th, Because, the inability of the Company to make the Dividends rescinded by this Bill, has been argued on a supposition, that the right to the territorial acquisitions of the Company, in the East-Indies, is not in that Company, but in the public; which method of arguing, if admitted as one of the grounds of the Bill, we conceive to be inconclusive as to the subject matter, and highly dangerous as to the precedent; for the Company being in possession, and no claim against them being so much as made, much less established, we hold it highly dangerous to the property of the subject, and extremely unbecoming the justice and dignity of this House, by extrajudicial opinions, to call into question the legality of such a possession, and to act, without hearing, as if the House had decided against it.

14th, Because, the forms of proceeding upon this Bill have been contrary to precedent; inasmuch as it appears by our journals, that whenever a Bill judicial in its nature, as affecting legal rights and private property, has come up from the Commons stating no facts as a ground for that Bill, or stating facts, the evidence of which does not appear in the preamble, the invariable practice of this House has been to desire a conference with the other, in order to be informed either of the facts, or of the evidence to support such facts (if alledged) on which the Bill was originally framed; and the Commons have on like occasions done the same by this House; instances of this mutual application from one House to the other, appear in the following cases, viz. Mr. Duncomb's case, March 1[illegible] Directors of the South Sea Company, Aislabie, Craggs, July 1721. Sir Thomas Cooke's [illegible] 1695. Cases of Kelly, Plunkett, and bishop of Rochester, March 1722. Bambridge's case, Ap[illegible]

729. Robinson and Thompson's case, March 1781.
ale of lord Derwentwater's estates, &c. 1732.
ase of Sir Robert Sutton, and others, March 1732.
ase of Al. Wilson, and the city of Edinburgh,
May 1737.

15th, Because in the proceedings on this Bill,
o Council was appointed in support of the Bill,
o state the grounds, to examine the witnesses,
nd methodize the evidence; for want of which
he lords themselves were obliged to call and examine witnesses, and appear more like parties than
udges.

16th, Because also, in the proceedings on this
Bill, when lords, who declared themselves patrons
nd friends to the Bill, had examined two witnesses,
nd said, they were satisfied with their examination, other lords were not permitted to call in any
other witnesses, before the council for the East-
ndia Company, against this bill, were ordered to
roceed. It was ever denied to lords, to bring again
o the bar the two gentlemen who had been examined (Mr Rous and Mr. Saunders, the chairman, and deputy chairman of the Company) although by the arrival of the ship Cruttenden from
engal, after their examination, which brought a
ew and very particular account of the flourishing
tate of the Company's affairs in India, it was very
ossible those gentlemen might have changed their
pinion; their former evidence having been merely
atter of opinion resulting from such information,
s they were at that time possessed of. Witnesses
ere dismissed unexamined, whom several lords
ished to have been heard; and the Bill was passed,
ithout waiting for the return of an account, declared by Mr. Rous to be such, that without it no
udgment of the present state of the affairs of the
ompany could be formed, and which had been
rdered by the House, and as the officers informed the House might have been prepared in a few
days.

days. In this manner this Bill has passed, which we are apprehensive may be found in its consequences very injurous to private property, and alarming to public credit.

Winchelsea and Nottingham,	Fred. Exon,
Scarborough,	Portland,
Temple,	Sondes,
Trevor,	Dorset,
Fortescue,	Rockingham,
Richmond,	Albemarle,
Dudley and Ward,	Eglintoune,
King,	Abergavenny,
Weymouth,	Ponsonby.
Gower,	

Singular PROTEST of the LORDS in IRELAND.

Anno 1765.

FROM an Apprehension of Scarcity at the Beginning of this Session, Heads of a Bill passed the *House of Commons* to prevent the Exportation of Corn, under certain restrictions, for a limited Time.

Left, however, *Great-Britain* should want Relief from this Country, or that there should appear to be no Scarcity, a Power of suspending the Prohibition was given by the Heads of a Bill, to the Chief Governor or Governors, and the Privy Council of *Ireland*.

In this State the Heads of a Bill left the *Commons*; but were afterwards altered, and a suspending Power given, by the Alteration, to his Majesty, in the Privy Council of *Great-Britain*. Great Opposition was given to the Bill, on its Return, and this Alteration particularly, in both Houses of Parliament.

A Motion being made, in the House of Lords, that the Bill should be rejected:

It was carried in the Negative.

Dissentient

1*st*, Because we conceive that a Law to prevent the Exportation of Corn is become unnecessary, and therefore ineligible, inasmuch as any Restriction upon trade is unadviseable and injurious, where it is not absolutely requisite; besides that the Grain's becoming cheap, in Consequence of such a Prohibition,

and of another Law of this Session for the Suppression of our domestick Distilleries, *English* Merchants might be induced to buy up large Quantities of our Grain at an Under-value, with a View afterward, by their Interest and Representations, to obtain in *England*, in Consequence of the Alteration which has been made in the Bill, a Suspension of this Law, in order to transport what they had thus purchased; by which Means this Country might be exhausted of its Grain, whilst its Individuals would be inadequately paid for the Produce of their Lands, and this Kingdom might, in Consequence of this Law, be reduced to that Distress, and even Famine, of which this Law was intended to prevent the Possibility, but of which it is in no Danger at present, except from the passing of this Law, as thus altered.

2dly, Because we conceive that the Heads of a Bill, as they went from the *Commons*, in giving a Power to the Chief Governor or Governors, and the Privy Council of this Kingdom, to suspend the Prohibition, provided fully both for this Kingdom, and for *Great-Britain*, inasmuch as it cannot be supposed that they would, contrary to the Interest of this Kingdom, continue the Prohibition, if it were found that there were any Superfluity of Grain, altho' *Great-Britain* were not in Scarcity: Neither can it be supposed, that, if *Great-Britain* were in Scarcity, his Majesty's Substitutes and the Privy Council of this Kingdom, would hesitate, upon any Intimation of it, to suspend the Prohibition, if it could be done without the immediate Ruin of this Country; at the same time that they would have had an Opportunity, if the Consequence were likely to be fatal, of remonstrating against such a Desire, and removing Misrepresentations at least, which they may not, as the Bill now stands, since the Power of Suspension is, by the Alteration, communicated to another Body, which may exercise it without their Knowledge or Intervention.

3dly, Because that the Governors and Council of *Ireland*, to whom, if the Bill had not been thus altered, the Execution of this suspending Power must have fallen, are Persons, in general, who have been born, or who reside, in this Country, who have many Ties to it, who must know, and who must partake of its Necessities, and who, if they were guilty of Misconduct, would be censurable by us; from all which Circumstances they are preferable to the Council of another Kingdom, who have no Ties to us, who have no Knowledge of our Circumstances, who would not partake in our Distresses, and whose Misconduct would not fall properly within our Animadversion.

4thly, Because we conceive, if it were convenient that the Legislature should be constantly assembled, that the Power of suspending any Law ought only to be vested in the Legislature which made it; but, as it is not convenient that the Legislature should be constantly assembled, whereas it is necessary that the executive

executive Power should always subsist, the Power of Suspension, where such a Power is thought necessary, is, for Convenience, transferred to the executive of the Country to which the Law belongs, but cannot constitutionally be transferred to the executive Power of any other Country; and therefore we conceive, that the Power of suspending this Law could only be constitutionally deposited in the executive Power for this Kingdom of *Ireland*.

5thly, Because although the Crowns of *England* and *Ireland* be united, yet *Ireland* is a distinct Kingdom, and, as such, has a distinct and seperate executive power, as well as a distinct and separate Legislative power. But the proper and distinct Executive of this Kingdom is his Majesty as King of *Ireland*, or his Substitute or Substitutes, with the Privy Council of *Ireland*, and not his Majesty, in the Privy Council of *Great-Britain*, inasmuch as the Privy Council of *Great-Britain* is his proper and distinguishing Adjunct, as King and Executive of *Great-Britain*, and is, in no sort, applicable to his Majesty, as King and Executive Power of this his Kingdom of *Ireland*.

6thly, Because we conceive it extremely dangerous to admit any Novelty which may tend to confound this Distinction, so necessary to be preserved, not knowing what Use may be made, hereafter, of such Innovations.

7thly, Because it is an improper and unconstitutional Restriction upon his Majesty, as King and Executive of *Ireland*, to subject him, as this Bill, thus altered, does, to advise with his *British* Privy Council, with respect to an Act in which he is concerned merely as the Executive of this Kingdom of *Ireland*.

Westmeath, *Tyrone*, *Longford*.
Grandison, *Charlemont*,

This Protest was attended by an extraordinary Circumstance, which ought not to pass unnoticed in this Work. The Lord *Grandison* was indisposed at the Time of the Division, and sent his Proxy to the Lord *Charlemont*; and in case of a Protest, he also desired that noble Lord to protest for him. But, upon this latter Point, a Question arose in the House, Whether a Lord could protest by Proxy? The House, at first, determined that he could not; and it seemed plausible: For, as the Reasons contained in every Protest indisputably arise out of the Debate, an absent Lord could not delegate his Subscription to Arguments which, it must be supposed, he did not know. Application, however, was made to certain Persons in *England*, who were presumed to be best acquainted with the Orders and Privileges of the *British* House of Lords, for Precedents of protesting by Proxy. Diligent Search was made, and none such could be found; but, in the mean time, strict Examination was made into the Lords Journals in *Ireland*, and five Instances were found; which being produced, the House admitted the Right of protesting by Proxy.

FINIS.

AN HISTORICAL ESSAY ON THE LEGISLATIVE POWER OF ENGLAND. WHEREIN THE ORIGIN OF BOTH HOVSES OF PARLIAMENT,

Their ancient CONSTITVTION, and the CHANGES that have happened in the PERSONS that composed them, with the occasions thereof, are related in a chronological order.

And many things concerning the English government, the antiquities of the LAWS of ENGLAND, and the FEUDAL LAW, are occasionally illustrated and explained.

By GEORGE St. AMAND, Esq;
Of the INNER-TEMPLE.

None can be said to know things well, who do not know them in their beginnings. Sir *W. Temple's Preface to his History of England.*

Rara temporum felicitate, ubi sentire quæ velis, & quæ sentias dicere licet. Tacit. Hist. lib. 1. cap. 1.

AN

Historical Essay, &c.

CHAP. I.

Of the state of Europe, and particularly of the form of government in Old Germany; the subduing the western province of the Roman empire by the northern nations; the original of all the European monarchies, parliaments, and the Feudal Law.

ALL the European governments consisted originally of few persons, contained small districts of land; and within the compass of what we now think hardly sufficiently extended to compose one kingdom, we find many princes dignified with the title of King: Thus, not to mention others, we read that there were in Italy kings of Rome, Alba, Hetruria, &c. And though these and the like states were anciently stiled kingdoms, yet if we were to speak of them according to the present acceptation of the word, and notions of things, we should rather call them Clans or Seprs; for with respect to the extent of ground, the number of subjects, and the power of the superi-

ors, they resemble more the Highland lords in the north part of this isle, or the old Tains in Ireland, than the present lustre or power of kings.

The Romans, ('twas a natural consequence of the circumstances of those times) whilst they were a free state, extended their command over great part of Africa, and Asia, and all Europe; (Britain, Germany, and the more northern provinces, only excepted.) As their empire increased, so did their vices, and the corruption of the people, which gave Cæsar (a), whose youth had been spent in the most scandalous and abandoned manner, a favourable opportunity to effect what Catiline had aim'd at before, I mean the reducing that empire under his own power. As Catiline's failing left his attempt branded with the odious name of a conspiracy, which his adversaries most justly imposed on it; so Cæsar's success made posterity call his rebellion by the specious, but improper name he himself gives it in his Commentaries, of a civil war. That he established tyranny, and that it continued long after in the Roman empire, is too well known to be farther insisted on.

Whilst all the rest of Europe (for Britain, after the change of the Roman government, was subdued) groaned under the galling yoke of tyranny and oppression, Germany (under this appellation Tacitus, Paulus Warnefridus, and others, comprehend the northern nations (b), for they come from one common (c) stock) preserved its native liberty, and probably the self-same government that was established when those countries were first planted; and then, as now, 'twas divided into many states, all independent one of another (d);

(a) Vid. Suetonium in vita Cæsaris.
(b) Craig, de Feudis 19. Verstegan 156.
(c) Grotii proleg. ad Histor. Gothorum, 22.
(d) Cæsar de Bell. Gal. lib. 6. c. 21.

few,

few, very few only, were under kings, and but two of those were absolute monarchs (*e*). In the other provinces there were superiors, distinguished in the Latin authors, from whom we have the account of their original government, by the name of Princes, in Latin, *Principes* (*f*); which word denotes no more than the First, nor, as to the Roman affairs, during the commonwealth, is it to be found in any other acceptation. Thus *Princeps Senatûs* does not denote the ruler or tyrant of the senate, but only the person who had the first rank in it. Under the emperors, even so low as Trajan, (and lower we need not look, for 'tis only necessary to know what sense Tacitus uses the word in) we find the word *princeps* used by his intimate friend Pliny, in his panegyrick on Trajan, in a like sense: *Hic regnum ipsum, quæque alia captivitas gignit, arcet ac submovet, sedemque obtinet principis, ne sit domino locus* (*g*). And in the same panegyrick, in another place, he has this expression, *Scis ut sunt diversa natura dominatio & principatus, ita non aliis esse principem gratiorem, quam qui maxime Dominum gravantur* (*h*).

The princes amongst our German ancestors obtained their dignity by election (*i*), and their authority consisted rather in persuading than commanding; in affairs of little consequence the princes determined; in those of great, the whole nation; who for the exercise of this power, and to consult of their own common good, met at stated times armed. At these meetings were all great affairs settled, princes chosen (*k*), and those who

(*e*) Tacit. Ger. c. 43, 44, & 7.
(*f*) Tacit. Ger. & Cæsar, ubi supra.
(*g*) Pag. 328.
(*h*) Pag. 319.
(*i*) Tacit. Ger. c. 12.
(*k*) Tacit. Ger. c. 11.

had been guilty of crimes might be accused (*l*): Here also were the youth, when grown to man's estate, produced, and by giving them arms, advanced into the rank of military persons (*m*).

The territories of each nation were divided into several cantons (*n*), which were afterwards called counties (*o*), where the princes administred justice, and composed controversies; but not solely or by their own authority, for 100 of the common sort were associated to them, to give them both advice and authority (*p*). The princes also annually assigned lands to the people, according to their tribes and families, to be by the individuals possessed for one year and no longer (*q*). These were afterwards by them portioned out to their slaves, to plough and till, under a reservation of part of the produce of the land; for in Germany each person's wife and children did the domestick business of the family (*r*).

In time of peace the German nations had no common superior of the several cantons each nation was divided into, but on any war one was chosen, with power of life and death, to command the army (*s*); in which the individuals were ranked and placed in troops, not by accident or chance, but according to their families and kindreds (*t*). On the whole, what the most learned the late bishop of Peterborough says of all governments in their primitive institution, is strictly true of those in Germany: His words are these, "And

(*l*) Idem, c. 12.
(*m*) Idem, c. 13.
(*n*) Tacit. Ger. passim.
(*o*) Grotius de Antiq. R. P. Batavorum, 62.
(*p*) Tacit. Ger. c. 12. Cæsar ubi supra.
(*q*) Cæs. de B. Gal. lib. 6. c. 20. & lib. 4. c. 2.
(*r*) Tacit. Ger. c. 25.
(*s*) Cæsar de B. Gal. lib. 6. c. 21.
(*t*) Tacit. Ger. c. 7.

"we

"we find no other obligation laid on them that "were under the same government, but that they "were to be (σύμμαχοι) assistants to each other in "case of an invasion from without, or a rebellion "arising within the same kingdom (v)."

Though the Romans branded our German ancestors with the name of Barbarians, yet if we look closely into things, we shall find the northern nations had more reason to retort that opprobrious term: The learned Grotius has very exactly drawn their comparison (w). In this place it may be sufficient to remark, that though the Romans certainly exceeded them in all the elegancies and luxuries of life, and also in the politeness of manners; yet in benevolence to mankind, the great virtue of human nature, this people excelled the Romans. We are expressly told, the Spaniards found it more eligible to live in subjection to these northern invaders, than to the Romans (x), and 'tis highly probable others did so: And well they might; for as is already observed, the greatest rigour they used to slaves, was only reducing them to the state farmers are in at this time. Nay, one of the finest genius's that ever Rome bred, mentions the difference of their circumstances, as if he thought them the happier of the two.

Libertas ultra Tanain Rhenumque recessit,
Et toties nobis jugulo quæsita negatur,
Germanum Scythicumque bonum (y).

Germany and Rome continuing, the one in a state of liberty, the other of slavery, yield the most illustrious and evident proof of the consequences

(v) Orig. Gentium Antiq. p. 261.
(w) In proleg. ad Hist. Gotho. p. 32, &c.
(x) Mariana, lib. 5. c. 1.
(y) Lucan, lib. 7. lin. 243.

that attend those conditions. That great city, which from small beginnings in a free state, extended its empire so widely, that, as Livy expresses himself, "It laboured under its own greatness." That city, whose inhabitants, whilst 'twas free, notwithstanding its continual wars, multiplied so fast, that it sent colonies into the remotest part of its far extended command; when reduced to slavery, soon became depopulated, as did its provinces: Though many means were tried to allure and compel the inhabitants to marry, yet they all proved ineffectual; and well they might, for who would exert his industry in acquiring a property that was unsecure, or get children, who could be certain of no other inheritance but slavery, and were sure of that? The strength of the empire was not only decayed in numbers, but more in spirit; for slavery debases the minds of men: And it fares with nations as with private persons; both by oppression grow stupid and decline, even as low as the brutal part of the creation, unless they have spirit enough to relieve themselves: And then the causes of their woe, as in justice they ought, and ever will, meet with an ample retribution.

The liberty in Germany produced the same effects that it had done in Rome, they multiplied, and being hemm'd in by nations as free as themselves, the sea, or the Roman territories, and thereby having no opportunity of sending colonies in a peaceful way, were forced to do it in a military one. For mankind, like waters, if pent up in too narrow a compass, naturally break their bounds, and overflow the adjacent country.

This increase of numbers amongst the northern nations, though it necessitated them to disgorge themselves, yet as none had a permanent interest in land, there seems to have been no foundation in justice or reason, to determine who were to leave

their

their native country, and embark in the laborious and perilous attempts of conquering new habitations. 'Tis therefore highly probable, they all proceeded in appointing the persons that were to undertake these expeditions, in the same or like manner that the Lombards (a people of German origin) did; they by lot decided who should go a colonizing in a hostile manner (z). That these armies were formed in the manner we have already described to be usual in Germany, is a truth too obvious to need any proof.

In the general a twofold superiority may be usefully remarked; first, that he was superior of the whole collective body; secondly, that as the whole was a confederate force of different states, or at least of different cantons, and the detachments of each led by superiors of their own, so was he, as well as others, superior over his own particular followers; and that all the power that the general or any other was invested with, flowed only from the good-will of the individuals, and was conferred by election, is evident to any one who will duly consider what we have already said of the form of their civil government.

Many were the irruptions of the northern nations; and as the imperial seat was removed to Constantinople, the wretched princes, that ruled this decaying empire, took most care to secure the parts near the place where they resided, and consequently left the western provinces more exposed. And as the inhabitants were thinned, and those that were left were debased in spirit, these invaders, though ill-armed and worse disciplined, with less difficulty conquered all the west of Europe, than the Romans did one province from the natives when they were free. And at last the Franks and

(z) Paulus Warnefridus de gestis Longobardorum, c. 2.

Normans settled in France; the Longobards, and afterwards the Normans in Italy; the Alans, Vandals, Suevians and Silingians first, and finally, the Goths in Spain (a), and the Saxons in England. All which revolutions, however amazing they may seem to short-sighted people, yet to those of any penetration, will appear nothing more than the natural, and as I think, necessary, consequence of the liberty the conquerors, and slavery the conquered lived under.

To understand the manner how these victorious people settled themselves, in their respective conquests, which will at once disclose the origin of all the European governments, and the Feudal Law; I must premise this observation, *viz.* That by the conquest of the land, the property of the whole was vested in the collective body of the people, and not in any one person. And for the better establishing this truth, I will prove, that the right was lodged in them; and also that that right was by them enjoyed, pursued, and executed.

In order to shew how the right stood, 'tis to be observed that these adventurers were not hirelings, had no pay as our armies have, which consequently are in the nature of hired servants, and whatever they get, they get for the benefit of their paymasters; but theirs consisted of a voluntary society, and were, if I may use the expression, partners in the expedition (b): For though the general, and other chiefs, were trusted with the conducting them, in such manner as would best answer the ends they proposed; yet surely none can suppose they left their country where they were free, and ventur'd their lives without any pay, for no other end than the acquiring a property in the land for

(a) Isidori Chronic. 733. Mariana, lib. 5. c. 5.
(b) Craig de Feudis, 20. Mezeray in the lives of Clothaire II. and Philip Aug.

their

their leaders, and nothing for themselves, no not a habitation, without losing that liberty, the German nations always prided themselves so much in (c). Secondly, in fact the land was parted amongst the individuals, and we read expresly, that Rollo, our William the I. Ancestor, honestly divided Normandy by Measure amongst the people he led (d). And this notion of every individual's having a right to a share in all that was got by war, continued long amongst the French; of which I will mention one very memorable instance, and that too even when they were under the government of princes dignified by the writers of those ages, and by us since, with the title of kings; 'tis this: Amongst the plunder a piece of church-plate was taken; this the king had a mind to restore entire to the church it belong'd to; but one of the soldiers insisted on his right to a share of the plate, and with his sword divided it, and took part. Their king, a year after, took occasion to quarrel with and destroy that soldier; but his not doing it then, evidently shews, he did not want will, but power to punish the action; and that what the soldier did, was, by the usages of that nation, consonant and agreeable to right and law (e).

The property of the conquered land being then in the whole collective body of the conquerors, every individual might be said in our law-phrase to be seized *per my & per tout*, and to have a right to some, though an undetermined part: And as the irruptions from the north did not proceed from any lust of rule, but from necessity; so the planting, and not plundering the country, was the end

(c) Vide Tacit. An. lib. 11. c. 16, &c.
(d) Vide Basnage on the first chapter of the Customs of Normandy, &c. (e) Mezeray, p. 3.

proposed:

propoſed: Therefore the aſcertaining this unfixed intereſt was neceſſary to their intended ſettlement.

As the conquering army was compoſed of a rude and unpoliſhed people of ſeveral nations, or at leaſt of detachments out of ſeveral cantons in the ſame, ſo was it the moſt obvious and natural method, to proceed in the diſtribution of the conquered land, by aſſigning to each diſtinct people a certain diſtrict of land as their portion, who having lived together in their native country, and after their leaving it aſſociated under the immediate conduct of one and the ſame perſon, were planted together; that, to uſe Tacitus's expreſſion, *mutua caritate rempublicam efficerent*. Theſe apportionments founded ſeparate and diſtinct governments in their firſt inſtitution, reſembling in all reſpects the Cantons in Old Germany, and not unlike the princes of the empire, and are the foundations of moſt of the diviſions of the weſtern provinces of Europe, whether they are diſtinguiſhed by the names of Principalities, Dukedoms, Counties, or any other denomination: And many remains of the ancient ſovereignty of the little ſtates ſtill ſubſiſt, though they are in all places, except Italy and Germany, deſtroyed. The adminiſtration of juſtice, the great characteriſtick of ſovereignty in thoſe days (*f*), is yet, according to theſe old diviſions, ſeveral and diſtinct. Hence 'tis, that in France every county and duchy (I ſpeak of the old ones) had, and yet have, a parliament; in Spain all their numerous kingdoms have theirs, which they call Cortes; and in England, not to mention the royalties of the Palatinates, every county has a diſtinct county-court: All which, however they differ now in name and power, were, in their firſt inſtitution, one and the ſame. And ſince the decline of the county-court, the

(*f*) Grotius de A. Rep. Bat. 61.

judges

judges have separate commissions for the powers they execute in the several counties. Nor is the military power less separated, being in other countries lodged in governors of the several provinces; and in ours in lords lieutenants, whose commissions for every county are also several.

From ascertaining the property of every people the confederate army was composed of, the next step was the distribution of these divisions. We have seen how in Germany allotments were made of several portions of lands to the individuals, according to their families and kindreds, to be possessed for the space of a year, and how they were afterwards portioned out: These conquerors proceeded therein according to the usages of their own native country. That they did it at a general meeting, we may reasonably believe. And it seems clear, that it was done also by families and kindreds, not only from what we have already observed, but also because we find amongst the Lombards, after they invaded Italy, one of their chiefs insisted on having some particular lineages and families for the inhabitants of his new dukedom (*g*).

The interest in the lands so assigned was but annual, and the use or perception of the profits was only given to the occupiers, the property remaining in the donors. Hence arose the distinction of *dominium directum*, and *dominium utile*, the characteristic of feuds.

These allotments to particular persons are called by the authors who write in Latin, whilst they remained annual, or only for term of life, *Beneficia*; a name they were first distinguished by in the reign of Clovis (*a*). This word yet is used, though applied only to church preferments. Afterwards, as 'tis thought, first in the constitution of Charles the

(*g*) Paulus Wernefridus de Gestis Longo. 781.
(*a*) Dominici de Alodiis, c. 8.

Gross,

Gros, in the year 884. Feuds (*b*), in our language, for ought appears, originally as now, Fees. Even in the same sense of the word, is at this day used in common parlance.

There is a vast variety of opinions amongst the glossarists concerning the derivation of the word *feud*, which the reader may see in the books referred to in the margin (*c*). The most rational account that I have found of its etymology, is that which deduces it from two old Teutonick words, *Fee* and *Ot*, or *Odd*; for *d* and *t* are frequently interchanged in the German tongue; the first of which originally had the signification it now has in common use, the latter word signified Possessions: So that verbally translated, it means no more than a gift of possessions (*d*). Nor can the writing of it at present *feudum* be an objection to this etymology, for in the old authors 'tis commonly wrote *feodum*; and we in our language still write *feofment* and *feoffee*, though the *o* is hardly sounded in the pronunciation.

Whether on the distribution of the land any service was expresly reserved, is not determined by any author of note; but it seems highly probable that no service was reserved, because the allotments being given to the possessor as a member of a voluntary society, to be held but for a year at most, such reservation seems unnecessary; for why should the donors stipulate for a power to remove a possessor, whom they otherwise had a right to deprive of his fee within the space of a year, and at any time by expelling him the society, or, as we now call it, outlawing the party.

(*b*) Craig's Sov. of Scotland, 17. Dominici, c. 15.
(*c*) Somner of Gavelkind.
(*d*) Grotii Proleg. ad Histor. Goth. p. 20. Shilter de Succes. Feud. Somner of Gavelkind, 109. and in Glossario. Vide etiam Spelm. & Dufresne in Glossariis.

As

As these victorious people were Germans, and parted their lands according to the methods practised in Germany, 'twill be natural to suppose, that they established a government conformable to that they had in their native country been us'd to. And in fact so they did; for their several leaders presided amongst their followers, in the administration of justice, in the same manner that the princes did in Germany. And as these were temporary officers (*e*), though distinguished by various and different names, the right understanding which will much contribute to the clearing what we shall further say on the subject of this essay, therefore the explication of them must be here attempted. These names may be aptly divided into two kinds; first, those which are used in the several languages of the conquerors; secondly, those they are denoted by in the Latin authors.

The rank of men whom Tacitus styles princes, by a word common enough in the German laws, are called Graves, which signifies no more than judges (*f*). Of the same import is the old Saxon word *Gerefa*; nor is it unlikely that originally they were of the same sound; for whoever will but consider, that writing, the great preserver of orthography, was unknown to the Saxons at their coming here, how various, even at this time, the same words in different places, are pronounced, will readily conceive, that some variety of spelling must necessarily occur. Besides, I would submit it to the learned in the Saxon, whether the *e* in the syllable *Ge* does not, like the Hebrew *Sheva*, only soften the sound of the letter *G*, which otherwise was in the old Teutonick sounded like *K* (*g*);

(*e*) Mariana, lib. 6. c. 1. Mezeray, &c.

(*f*) Grotius de A. Rep. Batav. 62. Vide Legem Salic. Edit. per Eccard, p. 68, &c.

(*g*) Grotii Prolegomena ad Hist. Goth. 20.

and

and of itself constitute no syllable. However the *e* came to be lost, sure it is that this word was here wrote without it; for in the laws which go under the name of Edward the Confessor's, we find the word *Gréve*, as the French have their *Greffier*, a word derived from the same root, and originally of the same signification (*h*). It should seem also that our ancestors indifferently wrote this word *Greve* or *Grave*; since we find it wrote in this last manner in the word *Portgrave* (*i*), and also in several surnames. As the *e* was lost in the latter part of the Saxons time, so in the Norman the spelling was yet reduced to a nearer conformity to the sound, and the *G* is left out of the beginning; whence came the well known word *Reve*.

As the word signified a judge, and the kingdom, in process of time, was subdivided into smaller districts, *viz.* trythings, hundreds or wapentakes, tythings, or town, every one of these districts had judges. Hence came the old words *Led-Grave*, *Cent-Grave*, *Tun-Grave*, and others (*k*). So in Germany the judges of the divisions used in that country were denoted by the same word conjoined with the name of the district: For example, the judges of the *Boro'* and *Marches* were called *Bur-Graves*, and *March*, or, as now commonly wrote, *Mark-Graves* (*l*); and in these two last, even it yet signifies the sovereign princes of the territories it is applied to.

As this rank of men were called *Graves* from their office, and as amongst an illiterate people wisdom can only be got by experience; so were they, as it seems, commonly, though not always, old men; and from their age received another ap-

(*h*) Spelm. in voce Gravio.
(*i*) 4 Instit. 253. Verstegan, 290, 326.
(*k*) Spelm. Glossarium in his vocibus.
(*l*) Selden's Titles of Honour, 348. Vid. Cambden, 227.

pellation

pellation here in England, being in the first ages of the Saxon government called *Ealdermen*, which literally translated, signifies *Eldermen* (*m*). In France, Italy, and Spain, where the Latin tongue was more established, and rather corrupted than extinguished, they were denominated by terms derived from the Latin *Senior*; and we since the conquest use the expressions Seigniory and Lordship as synonymous terms. The other appellations, of Prince, Senior, Count, and Duke, being Latin words, wrote and founded according to the dialects and pronunciation of the nations that utter them, will be best understood by explaining the Latin ones.

The classical sense of the word *Princeps* having been stated, its signification in the middle-aged writers need be only here considered. Two authors of unquestionable authority, have been pleased to inform us, that this word, when applied to the Saxon times, signifies *Ealderman* (*n*). Subsequent to the conquest, the same notation of the word continued; for William the Conqueror is indifferently styled Duke, Earl, and Prince (*o*). But this word in the Norman time had yet a more general signification; for example, Eadmerus uses it in one place as co-significant with the Latin words, *Primoribus & probis hominibus Cantiæ* (*p*); and in another enumerates the persons comprized under it thus, *Episcopi, Abbates, & quique Nobiles* (*q*). But what clears the sense of the word beyond all doubt, is the use this author makes of it, when he relates that Henry I. summoned the bishops, ab-

(*m*) Fortescue on Fortescue of Monarchy, 62.

(*n*) Selden's Titles of Honour, 502. Judge Fortescue's Notes on Fortescue of Monarchy, p. 64. Vide Marculphi Monachi Formul. 8. & Bignon. not: ad Illam.

(*o*) Fortescue ubi supra.

(*p*) Page 9. (*q*) Page 16.

bots,

bots, and princes of the kingdom, to do homage to his son William (*r*); for by the rules of the feudal law, as then understood, homage was due from all the immediate tenants of the crown, and them only; therefore 'tis plain this word must comprise all those tenants, and no other.

One of the oldest, and indeed the most proper expressions that I find applied to the chiefs of these victorious people, more commonly after called *Comites*, is the word *Senior* (*s*), which is no more than a mere translation of the Saxon word *Elderman*; whence one would incline to think that expression, or an equivalent term, was used in other countries as well as ours. This word is explained by Sir T. Craig thus, *Senior*, i. e. *Dominus Ealderman, Baro Caput Tribuum* (*t*).

The word *Comes*, literally translated, is no more than Companion, and was no name of office or dignity till Constantine first gave it to all persons who had any office (*v*). How the rank of people called by Tacitus *Principes*, and by the northern nations *Graves*, (for that *Grave* is the Teutonick word for the same person the middle-aged writers express by the word *Comes*, is most sure (*x*) came to be denoted by this appellation, is not to be accounted for, unless it was because they were all equal to one another in rank and dignity (*y*).

The application of the word *Dux* is indeed obvious; it implies no more than a leader, and is a term applied to the same person as the word *Comes*, the one as it seems to denote a civil, the other his military capacity (*z*). Nor will the union of these

(*r*) Page 117. (*s*) Dominici de Alod. c. 8, 13, 14, 15, &c.
(*t*) De Feudis, 36. (*v*) Mezaray, p. 3. Selden, &c.
(*x*) Paulus Wernefrid. 886. Eccard ad Legem Salicam, 133. Kilianus voce Grave, &c. (*y*) Grotius de A. Rep. Batav.
(*z*) Marculphi Formulæ, Form. 8. & Bignon. Notæ ad illam formulæ, edit. per Linden, 6. n. 32. Fortescue on Fortescue of Monarchy, ubi supra.

several

ſeveral duties in one perſon ſeem ſtrange to thoſe who conſider, that neither the ſcience of law, or the art of war, were, in the times of our Saxon anceſtors, wrought up to that degree of nicety we now ſee them arrived at. Nor was the union of theſe offices in one perſon without example, for ſo it was originally in Rome in the conſul; and how qualified he was for either, we may comprehend by Ovid's deſcription of him.

Jura dabat populo poſito modo conſul aratro.

The followers of theſe chiefs, diſtinguiſhed in the Latin authors under the appellation of *Comites*, remained in the ſame ſtate they were in their native country, and after became known in the writers of the feudal law by the name of *Vaſſals*; a word that is derived from the word *Geſell*, which was the name they had in Germany (*a*). They had alſo, as theſe, a ſhare in the legiſlature and government of their new conqueſts.

Theſe victorious people did not diſpoſſeſs the inhabitants in their conqueſts of all their lands, nor yet did they incorporate them into their people, or ſuffer them to conſtitute a part of their government; for in Italy the Goths divided the lands into three parts, one they left to the old poſſeſſors, the other two they took to themſelves. Theſe diviſions are in the writers of thoſe ages called *Sortes Gothicæ* and *Sortes Romanæ* (*b*). 'Tis highly probable from the paſſage we cited above out of Mariana, that they did the like in Spain. Sure it is, that the Franks, when they eſtabliſhed themſelves in Gaul, proceeded in the ſame manner; but their diviſions had different names, for what they took to themſelves was termed *Terra*

(*a*) Grotii Hiſt. Goth. 593. Spelm. in hac voce.
(*b*) Dominici de Alod. c. 5. ſ. 8.

Salica, the other, in the Latin authors of these times, *Alodium* (*c*), which word was then first used, and is derived from *A* and *Leud*; for in the old Teutonick language, *A* is a privative or negative particle: Also *Leud* in the same language signifies persons linked together in feudal tenures (*d*), who were the persons that had a share in the government. So that however the largeness of the estate in after-ages made it valued, for they remained, as originally, under the Roman government, hereditary, and not subject to any of the feudal duties; yet before tenants were oppressed, as it happened in subsequent times, with the undue and illegal executions of institutions devised for their good; the term *Alodarii*, by which the possessors of Alodium were denoted, was a term of reproach, as it discriminated the vanquished from the victors, and those who had no share in the government, from them that had. Though in this first use of the word, their land might be properly said to be free of all service, afterwards for the secure enjoyment of these portions of land, many of the possessors gave their allodial lands to the chiefs of great lordships, to take them back under feudal tenures. Others, without divesting themselves at all of their ancient possessions, placed themselves under such superiors, and then came in use the phrase of *tenere in alodio*, frequent enough in our book of Doomsday (*e*), and foreign writers; for all protection and subjection was supposed then to be founded on tenure.

Many these conquerors found in a state of slavery, and others, 'tis probable, they reduced to it;

(*c*) Dominici de Alod. c. 7. sect. 4.

(*d*) Idem, c. 8. sect. 8. Cambd. Brit. 170. Spelm. in voce Alod. Et vide Eccard. ad Leg. Salic. p. 166.

(*e*) Seld. Spiceleg. ad Eadmerum. Brady in his Preface to his History, passim.

these

these were not by them considered as members of the republic, but as part of their owner's substance; and doubtless were treated in the same manner those in that condition were in Germany.

The only difference I can discover between the European governments as instituted by these victorious people, and the old one they lived under in Germany, is with relation to their general, who was there an officer like the Roman dictator, made on extraordinary emergencies, and no standing magistrate in the state. In him we find a difference consequential to the difference that was in their circumstance; for being in a country but newly subdued, and to which they had no title but the sword, they were always in a state of war, and therefore they continued him in his office. These leaders or their successors were in time stiled kings by their own followers: I say in time, because neither in France, Spain or Italy, have they any word that signifies King, but what is derived from the Latin, a language these invaders were strangers to when they settled themselves in their conquests, and only gradually, and in the revolution of many years, by being corrupted with their native idiom, became the dialect of these several kingdoms. In England, where the Roman language was rather introduced than established, our word is derived from the Saxon, and from the glossarists of that language, its signification may be sought (*f*), but even that word, such as it is, was not in its primitive signification for some time applied to the leaders of our Saxon ancestors, for they were only styled *Heretoge*, from (*g*) the old Teutonick words, *Here*, which signifies Publick, and *Toge*, that signifies General (*h*), as if we should now say the ge-

(*f*) Verstegan, 315. Cambd. Brit. 234. Somner, &c.
(*g*) Tyrrel's Introduct. to the first vol. of his Hist. 40.
(*h*) Kilianus in voce Here.

neral of the publick; and indeed that ſeems to have been the notion theſe German nations had of a king, for we find the writers of thoſe ages dignifying the leaders of theſe invading nations, even before their conqueſts with this title, though at the ſame time their dominions extended no farther than their camps (*i*). And the Longobards retained ſo much of their old way of thinking, that after they had lived in peace ſome time in that part of Italy, ſince from them denominated Lombardy, they laid aſide the kingſhip, and lived under the adminiſtration of thirty dukes. Yet on the approach of war, they created a general, whom the writers of thoſe ages, according to cuſtom, call King, leaving however the power of the dukes entire (*k*), nor even after the aſſuming of the title of King, did the chiefs ſo ſtyled, uſe any ornaments of royalty till long after. In Spain none were till about the year 609 (*l*). In France, Charlemain firſt introduced them, who having uſurped the title of Emperor in the Weſt, thought it neceſſary, the better to equal thoſe of the Eaſt, to emulate them in the exterior appearances of majeſty (*m*).

As the general in the army derived his power from election, and conſulted with the other united leaders in carrying on their deſign, ſo after their conqueſt and ſettlement, and the acceſſion of the regal title, there were meetings, as in Germany, to conſult of the common good of the whole; they are diſtinguiſhed by various names here, and in France they were called parliaments, in Germany and Poland diets, becauſe they ſet but one

(*i*) Vertot of the Eſtabliſhment of the Britons in France, vol. I. 168.

(*k*) Mezaray ad annum 583, Paulus Warnefrid.

(*l*) Mariana, lib. 5. c. 9.

(*m*) Selden's Titles of Honour, 311.

day,

day (*n*), in Spain *Cortes*, in Latin *Placitum*, *Curia*, *Malleum*, but most commonly *Colloquium*, which deserves to be remarked, because the treaty of two absolutely independent sovereigns, for example, the kings of France and England, are constantly expressed in the middle-aged writers by that particular word (*o*).

From this plain distribution of the conquered land, time wrought two considerable changes, which both seem, however, to have been the natural consequences of the alterations it produced in the circumstances of the conquerors; I mean, in the interest of the feoffees, and the annexing services, since known by the name of tenures, both which shall be briefly touched.

Time and peace produced such an increase of people, that the conquered land became narrow enough for the inhabitants, and withal had given these new planters some taste of the pleasures, perhaps elegancies of life. Hence it became the interest of the then possessors to make their estates more durable, and the superiors also found the sweet of power, which naturally induced a desire in them to secure the possession thereof. Hence these rights that were originally annual, were enlarged into estates for life, after of inheritance; for what was the interest of all, who had power to do it, could not be difficult to effect. Further particulars of this change the reader may find in the books referred to (*p*), 'tis suffi-

(*n*) Dufresne voce Dyeta.

(*o*) Braly's Hist. passim.

(*p*) Lib. Feud. lib. 1. c. 1. Craig de feud. Tit. 4. f. 4, &c. Alteserra de origine Feudorum, c. 9. Dominici de Alodiis, c. 14 & 15. Duck de. J. C. c. 6. Spelm. Remains, p. 4. & in voce Feud. Vertot of the Establishment of the Britons, vol. 2. 58. Constit. Siculæ, lib. 3. Tit. 24. f. 2. Shilter de successione feud. p. 4. Mabillon de Re diplomatica, 220 & 264, &c. Mezeray ad An. 670, & 992, &c.

cient for our purpose to observe 'twas done, and that this alteration naturally induced two others very considerable in the constitutions of these governments: For,

First, It gave rise to the hereditary kingships and nobility throughout Europe.

Secondly, The land being all appropriated, necessity obliged many persons to devise ways and means from ministring to the occasions, ease, pleasure, and luxury of the rich, to obtain by such services a maintenance from the profit arising thereby to themselves. Hence arose the invention of some, and the encouragement of all sciences, arts and trades: This laid the foundation of the many cities or boroughs that were formed throughout Europe, which formerly in other kingdoms, as well as our own, by being in the constitution necessary and useful, became considerable.

As to tenures, the second alteration noted to have been wrought, it is to be observed, that the services originally annexed to estates, or by which they were supposed to be holden, were few, and such only as reason dictated, though after-ages multiplied them, and introduced many that were absurd enough. But to illustrate what is here advanced, let us consider what services it was reasonable landholders should perform in the circumstances they were in.

Feuds or fees were in their institution, and after, by the feudal writers, looked on as gifts, (the land being of more value than the service) and by that name are denoted in the books of feudal writers, as well as our own law-books; therefore the dictates of the least improved reason taught that the superiors, whose share, no doubt, was the largest and the fairest, should still continue to discharge the trust, for the well executing of which they were so amply rewarded: That whatever

was

was neceſſary for the preſervation of the whole community, of which each landholder was a member, and by whoſe gift they held their eſtates, each ſhould do for the good of the whole, and that the tenants lay under ſuch obligations, as the rules of gratitude tell the donee he has to the donor. Thus, as the leaders of every independent people before the apportionment of the land, led their followers; and in public councils, as their head or repreſentative, took care of their intereſt, ſo it was neceſſary, after the ſettlement in their conqueſts, they ſhould do the like. Further, each individual having his ſhare likewiſe, though not immediately, by the gift of the whole, and being one of, or deſcended from one of the conquering army, he was to perform military ſervice, when occaſion required; that is, when there was any rebellion at home, or the property of any one of the community was by a foreign enemy invaded. For as every body's intereſt was conſidered on the diſtribution of the land, ſo was it but juſt that each ſhould defend the other in his ſhare.

The large portions ſince diſtinguiſhed by the names of counties, *&c.* being allotted to one of the ſuperiors and his people, as members of the confederate army that conquered the whole land, and the ſhare of each individual being given to him as a member of one of the confederate nations or cantons, it followed plainly, that each nation ought to be faithful to the confederacy, and each individual to his own nation. Thus aroſe thoſe ſeveral ſervices which were after known by other names, *viz.* that of the ſuperiors or leaders by the name of baron ſervices, *&c.* thoſe of the individuals by that of military tenures, and the obligations of all by the word Fealty; but whether theſe tenures were by expreſs words annexed

to the eſtates on the doneés gaining eſtates for life, or inheritance in them; or whether from the conſtant ejectment of tenants who refuſed to conform to rules ſo obviouſly juſt, later ages conſidered theſe ſervices as tacitly, before they were expreſsly annexed to the eſtates; it is not eaſy to decide, nor is it neceſſary for the preſent deſign: Only it may be obſerved, that the obliging the individuals to fealty by oath, was introduced at, or ſoon after the time feuds were made hereditary (*q*), for as it ſeems, it was very common, if not univerſal, in the year 1020; ſince I find at that time the extent of this oath enquired into and explained as a thing of general concern (*r*).

After the tenants obtained a permanent intereſt in their feuds, many differences aroſe betwixt the ſuperiors and vaſſals, and betwixt the vaſſals themſelves, and conſequently occaſions of inquiring into, conſidering and determining their reciprocal duties and rights. The rules collected from ſuch deciſions, gradually became known by the name of the feudal law, and ſo prevailed all over Europe, that for many ages, properties in land amongſt theſe victorious people were decided by this law only. To purſue this ſubject into its full extent, would be to write a hiſtory of the changes time has wrought in all the European governments, which, the foundation being now laid, might be done without any great difficulty. But as ſome of the authors neceſſary to be conſulted for that purpoſe are not now before me, and the preſent deſign is limited to our own iſle, I ſhall here cloſe this hiſtorical narrative as to other countries, and conclude this chapter with ſome obſervations that will be of uſe in the ſequel, towards explaining

(*q*) Craig's ſovereignty of Scotland, 17.
(*r*) Corpus Juris Canonici, 305.

the

the constitution of the legislative power in this single kingdom, which is the particular subject of the residue of this discourse.

First, The conquerors consisting of voluntary societies, who acquired the country they possessed, and consequently were owners of the territory: We may see the foundation of all rightful power amongst them, which is, I think, to be derived from two foundations, *viz.* 1. As a voluntary society, no doubt the majority had a right to regulate the actions of each individual, so far as it concerned the society, whilst the individual continued a member of it. And 2. As the property of the land was in the conquerors, and no person can enter on the land of another without the owner's consent, and all proprietors are free to give it under such restrictions as they please: Hence arose a territorial jurisdiction, and a right to controul the actions of persons who were not members of the community, as well as those who were; only with this difference, that when the one left the land, the right ceased; whereas if the other did, it still subsisted, unless the party were also cut off from the community. From these two principles may be solved all the intricate questions concerning the power of the magistrate, and obedience of the subject; from the same principles also are to be derived the origin and measures of power in all the lesser seigniories, as well as those of the great seigniory of the realm. Here also we see a plain evidence of an implied original contract betwixt the governors and governed. For as no Man is by any law intended to part with any part of his property, without a promise from the receiver to give him an adequate return, whence the very parting with a shilling's worth of any merchantable commodity is sufficient to entitle the party, without

proof

absolutely independent of him, and therefore owed him neither service, homage, or fealty, which are due from every military tenant to his lord.

2. The property of the land was in the whole collective body of the conquerors, and not only in the general, and they only parted with the *utile*, not the *directum dominium*, therefore the service must be due to, and the tenure to which homage and fealty are incident, of them.

3. If the right to a barony was controverted, the decision of the title never was, in the times we speak of, claimed by any king (*z*); whereas if the gift had been made by, or the tenure of him, the judging power would have been in him solely; for who should determine the title to a gift, but the giver, or they that represent him, and succeeded to all his rights.

4. The service annexed to every feud is like homage and fealty owing to the lord, and comes in lieu of the land: Now if the tenure had been of the king, then would the service have been for his private benefit. Whereas that it was not so, is clear to a demonstration; for he could not transfer or alien the service (*a*). Nor could any king in Europe oblige the peers to attend him to any war he made for his own private advantage; because it is a known rule of the feudal law, as understood throughout all Europe, that the military service of the peers was only due in case of an invasion from abroad, or a rebellion at home. In Normandy, the conqueror, when he desired his barons to aid him in the war he was going to embark in against Harold, was told by

(*z*) Mezeray in Charlemagne, & ad Ann. 1217. & 1223. Vertot. vol. 2. 76. Altesera de origine Feud. 43.

(*a*) Cambd. Britan. 211. Dyer, 44. Corvin. Jus Feud. &c.

them,

them, that they were not obliged to assist in foreign wars. Of the like usages in France (and the usages of that people being originally almost the same with the Normans, deserve a particular consideration) we have the testimony of two very considerable authors. One observes, that though they were often divided into several kingdoms, and sometimes divers persons claimed the royal dignity, yet the dispute about the crown did never involve the people in any war; "For in such "case (says my author) they commanded their "kings to try their titles by law (I suppose before the peers; whose right to judge of the title to the crown of France, our Edward III. and his antagonist, when they put in their claims, both seem to acknowledge) "or if they refused so "to do, by single combat; because it was not "consonant to the rules of justice, or their "usages and customs, that the commonwealth "should be weakened, perhaps destroyed, by "the private animosities or quarrels of their "kings (b)." The other bids his reader remark (and well it deserves so to be) the difference betwixt the armies of France and the kings; "(c) For, says that wondrous author, when he "made war for himself, he had only the te-"nants of the feuds he was in possession of, "and even they served with regret; but when "the kingdom was concerned, all the force of "it was in motion, and every chief came in "person, and brought his own subjects with "him." Such also was the law here in England; for lord Coke says, the military tenants were obliged to attend in the wars against Wales and Scotland; because, as his lordship writes, (how truly, this is no place to enquire) they were

(b) Agathias, lib. 1. (c) Mezeray ad annum 1124.

of

of right subjects to the crown of England (d). And even at this day, in the empire, if the emperor makes war of his own sole authority, the other princes sit unconcerned at it; nor can he require any supplies from them: When the empire engages, then all proportionably contribute their assistance.

And *lastly*, (not to multiply reasons for the evincing a proposition in my apprehension sufficiently proved) if one of the peers refused to go, either not thinking it his duty, or, though convinced of it, yet neglecting to perform it, neither the determining the question of right in the first case, nor the punishment of the fault in the other, were lodged in the king, but the king and peers, that is, the parliament (e).

3dly, As if the king undertook a war on any other account than some one of the aforesaid causes, the tenants in chief were not obliged to assist him; so even when they did it either by the duty of their tenures, or voluntarily, the manner it was done in is very remarkable; for the conducting the army was not left solely to the will of the king or general; but, if I may use the expression, it was under a parliamentary direction, every one of the peers leading and commanding his own vassals, who obeyed no orders but such as their own chiefs gave them, and therefore were not obliged to go unless they went (f). On the whole, what greater power had the king over such an army, than the English general had over the late confederate forces in Flanders? Whilst this was conducted, as the leaders that composed it thought answerable to the ends it was formed for, submission was universal; when they thought otherwise, the general's power was reduced to the

(d) Coke upon Littleton, p. 68.
(e) Idem, 46, 72. (f) Idem, 68.

troops

troops of his own nation: So amongst these people, though the king might command his own vassals, yet the vassals of their peers, if their chief disliked his orders, would pay no obedience to them.

4thly, Though these victorious nations were not so polite as their posterity, yet were they far less barbarous than some imagine from the military service annexed to their estates, and that service being so honourable amongst them; for as we have seen by that, they were not obliged to war for the gratifying the pride or ambition of any person, nor was the fighting for such ends thought honourable, but the doing it for the defence of their country from foreign or domestic foes, was, and so it ought to be in every well constituted state.

The German nations continued long in their conquests under such free governments, and probably all their posterity might have remained in the same happy state to this day, if the books of the civil law, which were buried in oblivion for some time after they settled in the western provinces of the Roman empire, had never been brought to light (*g*); for till then, as far as I have observed, no prince in Europe ever imagined he had any title to arbitrary rule, but soon after they were discovered, some princes who had a false notion of grandeur, which must be founded on justice, made the *Lex Regia* (*h*) a colour for assuming despotic power. For the sake of this doctrine, many princes endeavoured to introduce the civil law into their kingdoms. Here it was unsuccessfully attempted (*i*); but it now

(*g*) Duck. de Jure Civili, 55.
(*h*) Digest. lib. 1. tit. 4. sect. 1.
(*i*) Instit. leg. 6. Fortescue de laudibus, &c. 77. Selden ad Fletam, 466, 472. Seldeni Janus, 68. Davis of Tonnage and Poundage, 21, 22.

prevails

prevails in the other parts of Europe, even in Spain, though the reading is, for this cause, was in that kingdom once forbid under pain of death (*k*). However, if this law had been duly considered, it would not have wrought so much mischief; for it does not attribute this binding power to any chimerical divine right, but derives it to the emperor by the gift of the people at the time of his election. So that even this very law, mentioned by a despotic prince as the foundation of his power, proves that the gift of the people is his title; and yet so great a part of Europe live in such a state, that 'tis to be feared some of their posterity may justly apply to themselves what Tacitus writes of the Romans under Domitian (*l*): *Dedimus profectò grande patientiæ documentum, & sicut vetus ætas vidit quod ultimum in libertate, ita nos quod in servitute; adempto per inquisitiones loquendi audiendique commercio. Memoriam quoque ipsam cum voce perdidissemus, si tam in nostra potestate esset oblivisci, quam tacere.*

CHAP. II.

Of the Legislature or Parliaments in England; from the coming in of the Saxons, to the Norman Invasion.

THAT the original inhabitants of Germany, Gaul (now France) and Britain, were one people, and first known by the common name of *Celts*, is most certain. Some learned persons have thought the first inhabitants of Illyria and Spain, were also comprized under this denomination (*a*),

(*k*) Duck. de Jure Civil. 252. Fabricii Bibliotheca Latina, vol. 3. 830.

(*l*) Tacit Vita Agricolæ, c. 2.

(*a*) Mezeray, p. 3. Cambd. Britan. 24.

which

which is now more credible, ſince the ſimilitude of their language has been ſo well manifeſted by the very learned Mr. Lhwyd in his Archæologia. From their being one people, 'tis probable that they had an uniformity of government; this ſeems alſo highly evident from Cæſar's account of the antient Britains and Gauls, the obſervations made by the learned Mr. Rowland, in his Mona Antiqua, and otherwiſe; but be this as it will, ſure it is that the Saxons, when they poſſeſſed themſelves of this iſle, ſubverted the ancient government of the Britains; therefore an enquiry into it is not within the compaſs of the preſent deſign.

However Gildas repreſents our Saxon anceſtors as mere ſavages; yet that author may be juſtly ſuppoſed to exaggerate their defects, and the irregularities which commonly attend a war. For it ſeems altogether improbable, that the Britains would have choſen them for their guardians and protectors, if they had been ſuch brutal animals as he deſcribes them. It ſhould be alſo conſidered, before his repreſentation of them is received for truth, who the perſon is that gives them ſo uncouth a character, and he will be found to be one of the very people they conquered; a circumſtance that will ſurely rather incline us to ſeek a true notion of theſe people from indifferent writers, circumſtances, their laws, and ſuch other evidences as yet remain. All which concur in giving us a more favourable idea of our anceſtors; at leaſt abundantly prove that time, and the Chriſtian religion, ſo tempered their former ferocity, that for the regular adminiſtration, and the preſerving the people in a real and unbounded liberty, the only end of civil government, they equalled, perhaps exceeded, all other nations.

As the origin of the Saxons has been with great accuracy explained by the learned Sheringham in

Latin, in English by the industrious Mr. Tyrell (*b*), it may suffice in this place to observe, that the Saxons, though not mentioned, at least under that name, by Tacitus, however soon after him are taken notice of, and gradually encreased in power, till at last they established their usage for law, in one half part of what is now known by the name of Germany, where it yet regulates not only the properties of private persons, but the succession of, and right to sovereignties themselves (*c*).

Though the Angles have denominated this isle, and all our writers denote by the general appellation of Saxons, the German nations that settled here; yet besides the Angles and Saxons, 'tis sure the Goths made part, and no inconsiderable part of those people; nor is it improbable that other nations were also mixed with them. That when they first arrived here they were Pagans, is certain, and more than probable it is, (tho' some authors seem to think otherwise) that they had not, till after their establishment here, the use of letters (*d*). These three nations, in their native country, had independent governments, and that they continued so long after their settlement in this isle, is evident from the diversity of their laws, published by Lindenburg; therefore it is clear no one person could claim a right to dictate laws to these victorious people: whence it demonstrably follows, that the legislative power resided in, and was exercised by the people, or persons who had an authority delegated to them by the collective body of the victors.

From all these peoples being Germans, and the great conformity that appears between the usages

(*b*) History of Eng. vol. 1. p.

(*c*) Schilter Prefat. ad Jus. Feud. Aleman. & de Successione, &c. (*d*) Shering, 293.

they

they eſtabliſhed here, and thoſe that have been mentioned in the foregoing chapter to have prevailed throughout Germany, not only in matters deducible by reaſon from the obvious rules of juſtice, but alſo the moſt arbitrary points of law; it may well be preſumed, that the government and legiſlative power amongſt the Saxons was the ſame it was amongſt the other German nations (*e*). But we need not rely only on probabilities; for of this we have the expreſs teſtimony of one of their hiſtorians, whoſe book not being to be got, I muſt deſire the reader to accept of his ſenſe in Verſtegan's tranſlation.

"For the general government of the country "they ordained twelve noblemen, choſen from "among others for their worthineſs and ſufficiency. "These, in the time of peace, rode their ſeveral "circuits, to ſee juſtice and good cuſtoms ob-"ſerved; and they often, of courſe, at appointed "times, met all together, to conſult and give or-"der in public affairs. But ever in time of war "one of theſe twelve was choſen to be king, and "ſo to remain ſo long only as the war laſted; "and that being ended, his name and dignity of "king alſo ceaſed, and he became as before. "And this cuſtom continued amongſt them until "the time of their wars with the emperor Charles "the Great; at which time Wittekind, one of "the twelve, as aforeſaid, a nobleman of Angria "in Weſtphalia, bore over the reſt the name and "authority of king. And he being afterwards, "by the means of the ſaid emperor, converted to "the faith of Chriſt, had by him his mutable title "of King turned into the enduring title and ho-"nour of Duke; and the eleven others were in

(*e*) Nicholſon de Jure Feudal. Sax. Wilkins in notis ad leges Saxon. paſſim. Brady's Preface to his Hiſtory, 53. &c. Spelm. in voce Feudum.

"like manner, by the ſaid emperor, advanced to "the honourable titles of Earls and Lords, with "eſtabliſhment for the continual remaining of "theſe titles and dignities unto them and their "heirs; of whoſe deſcents are ſince iſſued the "greateſt princes at this preſent in Germany."

In the period of time that is now the ſubject of our conſideration, there being no monuments of the Saxons older than the eſtabliſhment of chriſtianity, and ſo little light to be got from thoſe that are after, we ſhall be obliged more frequently to have recourſe to inference from thoſe few truths that are known, for the diſcovery of the conſtitution of the legiſlature. Therefore, reſerving the mentioning thoſe evidences that occur in hiſtory, the Saxon laws, or other memorials of thoſe times, which have with great induſtry been gathered by Mr. Tyrrel, to their proper place in the ſequel of this diſcourſe; as in all argumentation ſome principles ought to be laid down, from whence the proper deductions to diſcover what we ſeek may be made; ſo in this caſe I muſt premiſe theſe three propoſitions:

1ſt, That as all the German nations lived under one form of government, and eſtabliſhed like ones in the ſeveral countries they conquered; 'tis to be preſumed, that the Saxons, who were a German people, lived at home under the ſame government the other German nations did, and when they conquered Britain, eſtabliſhed a government here of the ſame form they had lived under in their native country (*f*).

2dly, That the feudal law prevailed in the Saxons time, and therefore that law being deduced from the uſages of the northern nations in Germany (*g*), 'tis to be believed that the Saxon government,

(*f*) Spelm. in Gloſ. voce Feudum.
(*g*) Grotius de Jure Belli & Pacis, lib. 1. c. 3. ſ. 23.

as

as all the governments in Europe eſtabliſhed by the German nations were, was alſo built on, and derived from that law.

3dly, What is ſaid in The Mirror of Juſtices concerning the eſtabliſhment of the Saxons, and their government, ought to be received for truth.

The firſt of theſe propoſitions carries its own evidence with it, and cannot be denied by any lover of truth; with others it is folly to reaſon. The two laſt indeed ſeem to want ſome clearing, the one having been denied, and the authority of the Mirror weakened; therefore we will now proceed to the eſtabliſhing theſe truths, that the arguments drawn thence may have their juſt weight.

'Tis the opinion of Sir Henry Spelman, that the feudal law was introduced here by William I. On the other ſide we are told, Sir *Roger Owen*, in a manuſcript treatiſe, has proved that the feudal law, even with all its appendages of wardſhip, marriages, &c. was in force here in the Saxons time (*h*). The incomparable Mr. Madox moſt juſtly obſerves, that notwithſtanding the controverſy that has been concerning feuds, and the feudal law's being in force in the time of our Saxon anceſtors, the queſtion was never diſtinctly ſtated, without which it cannot be ſolved (*i*). The learned biſhop Nicholſon, in his diſſertation on this ſubject, has purſued the hint given by Mr. Madox, and diſtinguiſhed the feudal law into theſe ſeveral periods, which he terms its birth, infancy, youth, and ſtate of perfection. The firſt he limits from the time of the irruption of the northern nations, which happened about the beginning of the fifth century, to the year 650. Its infancy from thence to the year 800. The third period from

(*h*) Tyrrel's Introduction to the Hiſtory of England, p. 3. Hicks's Diſſertat. Epiſt, &c.

(*i*) Hiſtory of the Exchequer.

thence to 1027. Soon after which it arrived to its state of perfection (*k*). That the feudal law, as understood in this last period of time, was unknown to our Saxon ancestors before the Norman invasion, is beyond doubt; but that in the first, if not in the second and third state, it flourished here, may be evinced by the following reasons.

1st, There are as many footsteps of the feudal law amongst the Saxons, as amongst the several laws of the other nations published by Lindenburgh, not excepting the laws of the Lombards themselves; and yet the learned publisher of that collection observes, in his preface, that the beginning of that law may be discerned in them. Which observation is as applicable to the Saxon laws, there being so great a parity betwixt them.

2dly, As it is obvious from the foregoing chapter, that it was gradually produced from the usages of the German nations, so there being an uniformity of usages at home, and of circumstances abroad, it is to be presumed they had a like effect.

3dly, Some authors attribute the very origin of the feudal law to the Saxons, others to the Lombards. Now the Lombards and Angles, from whom our isle is denominated, were one people, tho' distinguished into several cantons (*l*); therefore if the origin of the feudal law be attributed to the Lombards, it will be hard to conceive, why the same might not as well be introduced here by the Angles, as it was by the Lombards in Italy. The reason will yet be more cogent, if we suppose the Saxons first instituted this law. Which supposition a very learned author seems to incline to, by saying, That it is certain the feudal law prevailed most antiently amongst the Saxons (*m*). And

(*k*) Vid. Craig. de Feudis, p. 20, &c.
(*l*) Shering, 29. (*m*) Craig. de Feudis, 25.

there

there is yet extant a system of it, according to their usages, which another very competent judge affirms to be the oldest of any whatever (n).

4thly, There's no rule of the feudal law so old as the first or second period of time, that was in use in any foreign country, where it is confessed the feudal law did prevail, that was not in force amongst our Saxon ancestors (o).

5thly, Many usages were in force here that were unknown till the feudal law was introduced, and never prevailed in any country where that was not in use; as homage, relief, heriots, the law of compurgators, &c.

Mr. Selden (p) first observed the old law book, called, The Mirror of Justices, could not be so antient as the chief justice Coke and some others pretended (q). Bishop Nicholson, in his Historical Library, concurred with Selden (r); and Dr. Hicks copies after these learned authors (s). But I think all that Selden or the bishop assert, is, that Horn lived in the reign of Edward II. some other authors say Edward I. and that the book, as it now stands, is not so antient as the Saxons time. As their reasons will not prove, therefore their authority cannot be urged to support what Dr. Hicks would insinuate, that the whole book is a composure of so late a date as Edward the second's time. That the shape it now appears in may not be older, is readily admitted, and that it is not come to us free from interpolations, will not be denied: but why may not we suppose, the book was a translation of some manual of the Saxon laws put into Norman French, with such additions as Horn thought proper, to accommodate it to the usages

(n) Strykius de Feudis, 93. (o) Nichol. Dissertatio Ep.
(p) Craig's Sovereignty of Scotland, 156.
(q) Dissertat. ad Flet. c. 1. in notis ad Fortescue, p. 5.
(r) Page 229. (s) Dissertat. Epistolaris, 43.

of the time he lived in? The book being a syſtem of laws, expoſed it to attempts of this nature more than any other: and we know this has frequently happened to law-books; might not this book have the ſame fate? Let it be farther conſidered, that Horn could have no viſible reaſon or motive for attempting to deceive poſterity. Theſe conjectures are ſubmitted to the learned reader's judgment. But be it as it will as to them, ſure it is, that this book contains what our anceſtors thought truth three hundred and fifty years ago, and never was controverted till lately; we may therefore rely, I think, on all that occurs in it which cannot be falſified.

Theſe principles premiſed, I now proceed to enquire, who were the perſons that compoſed the Saxon legiſlature. In this the following method ſhall be purſued.

1ſt, The opinion of Dr. Brady, with his reaſons, and the objections that occur to it, ſhall be ſtated.

2dly, That of Mr. Tyrrel in the ſame manner.

3dly, Since the hypotheſes of both thoſe learned gentlemen are liable to juſt, and to me unanſwerable, objections, another will be propoſed, which I ſhall never think myſelf engaged to ſupport, farther than it ſhall be found agreeable to truth.

Dr. Brady without diſtinction aſſerts, that from the Saxon to the Norman invaſion, laws were made by the king and an hereditary nobility. To make good which, he affirms, that by the word Witena Gemot, we are to underſtand a meeting of an hereditary Nobility, and that therefore the Commons had no ſhare in the legiſlature.

This hypotheſis is liable to the following objections.

1ſt, Since in Germany all had a ſhare in the legiſlature, by what occaſion or means came that natural right, which is ſo annexed to every free-

man,

man; that when he parts with it (supposing he can divest himself of it) he loses that name; which way, I say, or by what means did the Commons amongst our Saxon ancestors depart from their share in the legislature?

2dly, Dr. Brady, for the establishing this monstrous doctrine, relies much on the word Wita, which, according to him, signifies wisemen, judges or lawyers, and noblemen. The first of these expositions is incontestably true: the second, tho' advanced by the doctor, is very insufficiently proved, tho' it is of the utmost import to the discovery of what we both seek. He only cites Hotoman's Interpretation of the cosignificant Latin word *sapientes* in the same sense: and even in this the doctor either writes uncorrectly, or is grosly deceived; for lawyers there were none by profession amongst the Saxons, no nor for many years after the Norman conquest, besides the ecclesiasticks. Nor is the doctor's error, with relation to the disjunctive interpretation by the word judges, less exceptionable, if the word is to be understood in the sense it bears now, and was understood in when the doctor wrote; because the known notation of the word then, and now is, certain persons, who by a delegated authority from others determine the controverted rights of their fellow subjects; whereas in the Saxon time, and long after, both here and in other parts of Europe, every member of the several and respective communities of the many states our German ancestors divided their conquests into, were co-judges, even as now the four judges of Westminster-Hall are in their different benches. Therefore this general assertion was inaccurate and untrue, but with proper restrictions may be admitted; for in every community, whether ecclesiastical or civil, some persons presided in the guilds or fraternities, and consequently

sequently in the judicatures appertaining to them. These, as appears by other authorities, were by the middle aged writers termed *sapientes*; and that they were the persons our Saxon ancestors termed *wites*, is, as I conceive, apparent from the following reasons:

1. The assembly of the Saxon legislature, after the distribution of the heptarchy, is in the monuments of those times called Witena Gemot, or Witena Mot. That *wite* signified wisemen is already noted to be agreed by all; nor is it less clear, that the presiding judges in every community, ecclesiastical or civil, that were originally instituted, were members of of it, and that in consequence thereof the *wite* did signify the presiding judge: and when it is less clear it did denote some of that rank, and absolutely certain, that after the subdivision of the kingdom into lesser districts, and, consequential thereunto, of the judicial power, the word *wite* is applied to other persons, is it not highly probable that they were also the presiding judges in the several parts of the shires? And will not this seem yet more so, if it appear in the sequel, as I trust it shall, that when this word was first used, there were no ranks or orders of persons known to our Saxon ancestors, besides that of magistrates and freemen. But this truth is not only evident from reason, but also by the authority of the Saxon glossarist, by whom it is clear it was co-significant with the word *gerefa*.

2. It was not, the circumstances of those times considered, an improper or harsh metaphor to denote the presiding judges by a word that properly and directly signified wisemen, those magistrates being, at the time the word was first so applied, elective, and all the secular ones at least annual, and therefore probably chosen for their being eminently possessed of that quality, to preside in their

their respective communities, and by their wisdom to moderate, allay, or compose all differences that arose amongst the members of their respective societies.

That the third gloss is erroneous, may be proved from the very passage out of king Ina's laws, cited by the doctor himself in his exposition of this word; for in the time of that king, who ruled thirty-eight years, and commenced his reign in or about the year 688, nor for long after, there were neither here in England, nor in any of the other western provinces of Europe where our German ancestors settled themselves, any noblemen besides the annual and elective magistrates, which the doctor does not mean by that word; for, according to that sense, the Commons had a share in the legislature, which the doctor does absolutely deny. The other authority he cites to maintain his extravagant position, is Somner's Saxon dictionary, which, if fairly stated, will as little avail: for tho' that very great man does, amongst other expositions of this word, use that of noblemen; yet in the very next column, explaining the word *Witena*, when being conjoined with the word *Mot*, or *Gemot*, it signifies the legislature; (and its meaning then is all the doctor and I seek.) That truly great man writes in this manner; "Synodus sapientium, prudentium consessus, concilium, comitia; a synod, council, or assembly of counsellors, a meeting of wisemen, as in parliament."

Mr. Tyrrel supposes that not only the nobility, I mean the persons we now understand by that expression, but also that rank of persons amongst the Saxons that are distinguished by the appellation of *Thanes*, were also members of the Saxon legislature, and that the boroughs were represented. So much of his hypothesis as relates to them, is, I think, in the manner we shall explain in the sequel, true; but I cannot

not believe thanes sat in the Witena Gemot, for the following reasons:

1. The thanes were only tenants by serjeanty. (The reader will here permit me to assume that which in the sequel will be proved.) Now to suppose the tenants by serjeanty were members of the Witena Gemot, is what never was advanced by any one, and seems inconsistent in itself, and with the nature of the service, which was merely personal, without any respect to the public. And indeed this supposition seems to be attended with a fatal consequence, which however ought not to be imputed to the learned author, who was undoubtedly a lover of truth and liberty. The consequence I mean is this, if by being the king's thane, or tenant by serjeanty, the party had a vote in the Witena Gemot, the king might always do whatever he pleased; for he had power to take as many servants as he pleased, and in consequence thereof, to erect as many tenures by serjeanty as he pleased, and therefore to nominate a majority of members in the Saxon parliaments.

2. In the titles of the Saxon laws no mention is made of any thanes, tho' many other ranks of persons are noted: and surely, if they had been members of it, in some of the titles we should have found the word *Thane*.

3. In the Saxon laws all persons lives have a valuation, which in their language is called *Weregild*: by the proportion of the valuation it appears, that the thanes were an inferior order of men.

I am now, according to the proposed method, obliged to the adventurous task of offering to the reader what, as far as I can yet discern, was the constitution of the Saxon legislature. That I may lay before him my apprehensions on this subject in the best manner, I must desire him to bear this truth

truth in his mind, that in every government, power results from, and is the natural consequence of, property or estates; and that in all places where tyranny does not prevail, the persons who compose the legislature, derive that power from the interest they have in some lands, that are part of the territory of that society to which they belong, or else from some distinction of rank and order, which discriminates the members of a society. Therefore to discover who were the legislators in the Saxon time, it will be necessary first to remark the manner they settled themselves in this isle, (whence the persons who were proprietors of land will be obvious) and also how many ranks of persons may be found amongst them.

The Saxons originally divided their conquests in this isle into as many shares as the king had companions, so my author terms the persons in Latin styled *Comites* (*a*); for there were Earls long before Alfred's time (*b*). These portions of land were originally called Shares, latterly Shires, which were then, to use a learned author's significant words, "so many associations or societies in public charge or service (*c*);" as the Cantons were in Germany. Thus things continued till the utter dissolution of the heptarchy, which I date from Alfred's reign; for though Edgar is generally counted the first universal monarch of the whole isle, yet in truth the space betwixt his reign and Alfred's seems to have been a time of unsettledness and confusion; such prince amongst the seven who happened to be the mightiest, acting as, and being generally accounted the supreme ruler over

(*a*) Mirror, c. 2. Fleta, l. 1. c. 17. s. 9. Bracton, l. 2. c. 16.

(*b*) Spelm. voce Comes.

(*c*) Bacon of the Government of England, p. 65.

the

the others (d). This king uncontestedly had a superiority, and reduced the whole into a regular and well digested form of government. Some historians, in an undetermined manner, attribute to him the division of the whole realm into shires, which in general cannot be admitted for truth. But if it be understood of the shires, 'tis now divided into, and that the old ones were so antiquated or varied, that with respect to what is now in use, it may be deemed the work of that king, this position, so limited, may be true. However, most certain it is, that he first subdivided the shires into trythings or laths, hundreds or wapentakes, as they are yet commonly called north of the Trent, and them into Tythings (e), which were also promiscuously at first called Boroughs as well as Tythings (f); though in most places in England, Kent excepted, where the word is yet used in that sense, they are only called Tythings, and the other appellation is appropriated to places that send representatives to parliament. By the laws of this king every person in these tythings were to be security for the behaviour of one another; and for this cause all persons were obliged to live in some one, or be killed. The like law prevailed in France, though its breach was less penal (g).

As the people encreased in numbers, they spread and inhabited other places within the precincts of the tythings, which by being inhabited became known, and were distinguished in our law books by the name of Hamlets, from two Saxon words,

(d) Brady's History, 100, 103, 111, &c. Cambden's Brit. 226, &c.

(e) Brady's Preface to his History, 116. Spelm. voce Comites. Cambd. Brit. 346. Fortescue on Fortescue, 114, &c. Wilkins voce Centuria. Brady's History, 84, &c.

(f) Lambard's Perambulation of Kent, p. 24. Ælfrici Glos. voce Curialis.

(g) An. Dom. de Alod. c. 13.

Ham,

Ham, which signified a Dwelling, and *leir*, which signified to assign. Yet having acquired inhabitants, and in consequence thereof a name, subsequent to the division of the kingdom by Alfred, they did not compose separate societies either in ecclesiastical or civil affairs, but remained members of the tything, manours, and parishes to which they originally belonged (*b*).

In this distribution of the land, many things deserve observation; such as may be of use in the present design, are as follows:

1. That the tythings, their division being founded on the number of families, and not on the extent of ground, must be unequal; for the proprietors of land all resided on their estates, whence they were in after-ages denominated Manours, *à manendo*. And as there were no little freeholders in those early days, nor for long after, ten such families must necessarily be remote from one another, and occupy a large space of ground. Whereas tradesmen, because many of their arts and occupations are auxiliary and subservient to one another, were engaged by the prevailing tye of interest, as well as the natural inclination to society that is planted in human nature, to unite and live contiguous to one another.

2. However obvious the meaning of the words *Ten Families* may seem, yet in truth it is not so; for by that expression we now understand ten housekeepers: which sense it cannot be on this occasion understood in; for then many counties having but three or four hundreds, could have but three or four hundred houses in them.

To discover then what is to be understood by ten families, we must look into some circumstances of those ages. The lowest rank of men amongst

(*b*) Finch, l. 2. c. 1.

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the proprietors of land in the Saxon time, were the thanes. What his possessions were may in some measure be discovered by the law that advances a *Caerl*, or boor, to an equality with a thane, by his having five hides of land, a hall, a kitchen, and a church. Here is a just description of a lord of a manour; for many parishes and manours yet, and it may, I think, be proved that all originally were co-extensive. It may be further observed, that these proprietors of land, even as it had been used in Germany, manured it not with their own hands, but by their slaves and hirelings, and, as I take it, constantly supplied their labourers with victuals; for, as all the glossarists agree, the well known word Lord is derived from the Saxon word (*i*) *Hlaford*, which signifies a giver of bread. Now though many of these labourers might not perhaps lodge under their lord's roof; yet considering they served him, and he fed them, even in the modern sense, they might all be counted part of his family, notwithstanding some dwelt perhaps with their wives and children in little huts erected on some part of their lord's estate, as we may well believe they did, from the frequent use of the words *Cottarij*, *Bordarij*, *&c.* in Domesday. If then all the persons resident on a manour were deemed in the Saxons time, as 'tis, I think, sufficiently cleared they were, part of his family, we see what a tything was; for that ten such families might constitute one, is consistent with reason, and all that we know of the Saxon government.

As the words Ten Families are not, in my apprehension, to be understood of the families of every little housekeeper in the tythings that have been just now treated of; so neither can I conceive

(*i*) Verstegan, 316. Wilkins & Somner in Glossar. &c.

that

that the tythings amongſt the trading part of the nation conſiſted only of ten ſuch families of ſhopkeepers as we now ſee. But it ſeems more probable, that ſeveral handicraft perſons aſſociated themſelves in partnerſhips or companies, which are in the Saxon called Guilds: nor is it unlike, that ſome more eminent might employ great numbers of artificers, who were ſome, perhaps, hirelings, other their ſlaves to work under them; and if we underſtand by the words ten families amongſt the trading part of the nation, ten ſuch as are here repreſented, we may well conceive that they conſtituted towns or boroughs.

It may be, perhaps, objected, that according to this hypotheſis, ten trading companies or families which employed a great many artificers under them, were as much conſidered as the poſſeſſors of manours; which is certainly truth, and on due conſideration, cannot ſeem ſtrange: for 'tis plain by the Saxon laws, that rank was in their conſtitution, as it was in many others, annexed to poſſeſſions. Thus 'tis expreſsly declared, that if a Caorl, that is, a yeoman or boor, throve ſo well as to have five hides of land, a church, and a hall, he was equal to a king's thane. Again, 'tis in another place provided, That if a merchant croſſed the ſeas three times on his own ſubſtance, that he ſhould be equal to a king's thane. And if we look even in our own times, we ſhall ſee many ſingle tradeſmen of much greater wealth and power than many lords of manours, and trading boroughs veſted with a greater ſhare in the legiſlature than fifty of them.

The ſeveral families that conſtituted theſe ſubdiviſions being antecedent to this diſtribution, many of them neighbours and relations, not only by marriages, but alſo, conſidering the method we obſerved the northern nations to have proceeded

in planting their conquests, probably descended from one common ancestor, easily coalesced into petty states, and formed communities different from the shires in nothing but the number of inhabitants, and extent of ground. And as in the first distribution of the kingdom into shires, there were persons chose, whose office it was to preside in the general assembly of every county, so was there the like in these lesser districts on this subdivision; for before that we find no other magistrate but the Ealderman, or Shere Gerefa; after it, we find this word applied, in the manner there was occasion to remark before, to the magistrate of every one of these districts. And even at this day, the chief persons in each tything are called Borsholders, which is a corruption of the Saxon words Burgh Ealder, Headborough, and Tything-Man; which last are too well known to want explanation.

In whatever view our Saxon ancestors considered the magistracy of these divisions, whether, according to the modern mode, as an object of desire, or, which is more agreeable to the simplicity of those times, 'twas thought a burden to be shunn'd, yet 'tis sure 'twas conferred by election; for where all persons are equal, there can be no other foundation for determining who shall receive an honour, or be loaded with a burden.

Every one of these little republics, amongst the other rights of sovereignty they were vested with, also exercised a judicial power within the precincts of their own territories, and had some public places where the individuals met to determine any controversies amongst their fellow members (*k*). Many of these are vanished, and even their very remembrance is gone. In London and some other places they yet subsist, and are called the Hustings, from

(*k*) Fleta, lib. 2. c. 5.

two

two Saxon words, *Hus* and *Ting*, which signify the House of Pleas. These jurisdictions, as lord Coke, though no friend to any court but those of Westminster-hall, asserts were original, and not derived out of them (*l*).

All the Saxon laity may be divided into the magistrates, or those that were not: under those we comprise the earls, and all those officers they called Greves, of which sufficient has been said already. These are the persons who were known by the names of Thane, Under-Thane, and Caorl.

Various are the opinions of the learned who have wrote concerning Thanes, the enumeration and examination of each opinion would be too large a digression: It may suffice in this place to refer them to the note (*m*), and observe, that the word is derived from the Saxon *Seman*, and is constantly rendered Minister; only in Domesday, the word Servientes is often applied to the same persons, who are there styled Thanes and Ministers; and mention is also made in that great record of their offices, as Chamberlain, Hawker, and Hunter, which, in the dialect of our age, is Master of the Hawks, and Master of the Hounds, and many such like; and were, in one word, the same persons and service that, in the Norman time, were called Tenants by Serjeanty, and, if I guess right, owe their rise to the following cause.

When time had polished the Anglo-Saxons, for this word does not occur in the oldest monuments, many offices that the great landed proprietors discharged at first in their own persons, as was used in Germany, on the motives of necessity sometimes, ease and grandeur more frequently, were by them devolved on others. As in those

(*l*) 2 Instit. 327.

(*m*) Spelman's Remains, 16. Selden Specileg. ad Eadmerum, p. 170. Wilkins voce Thane.

days, for want of money, most commerce was carried on by barter, and the rents were paid in part of the produce of the soil; so for the same reason was there a necessity of finding some other method of retribution, or rewarding persons for services, than paying them in money: Hence arose the giving land in lieu of, and recompense for, personal service. This seems to be strongly supported by the writ of William Rufus; (*n*) from which one may collect, that Tain land paid no rent, and that consequently the superior had the tenants service in lieu of, and recompence for, his land.

Thanes are divided into greater and lesser, only differing in this, that the greater held of the king, and the lesser of some subject.

The Caorl was what we express now by the words Boor, Husbandman, and Farmer; a free person who lived by manuring another person's land (*o*), at first probably for victuals, and after, when leases became in use amongst the Saxons, in return for the occupation of it, by way of rent, delivered part of the produce of the soil to the owner.

The titles of the Saxon laws mention various persons as legislators, which, for the reader's satisfaction, are here given as rendered into Latin, by the learned Dr. Wilkins.

Leges Hlotarii & Eadrici.

Hlotharius & Eadricus Cantudriorum reges constituerunt leges has, quas ipsorum seniores statuerant ante hæc judicia quæ postea edicuntur.

Leges Wihtrædi.

Mitissimi Cantuariæ regis Wihtrædi regnantis quinto anno regni, indictione nona, die sexto Augusti,

(*n*) Brady's Preface, 24. Vid. 2 Instit. 631. Seld. Janus, 93.

(*o*) Spelm. Remains, 14.

gusti, in loco qui vocatur Berghamstede, congregatum fuit optimorum procerum consilium. Ibi erant Birhtwaldus Britanniæ archiepiscopus & ante nominatus rex, Rossensis etiam episcopus, quem omnes Gibmundum vocabant, & dignus vir erat. Et loquebantur omnes ecclesiastici ordinis dignitates unanimiter cum populo sibi subjecto.

Ibi optimates illi omnium assensu hæc fecerunt judicia, & justis Cantuariorum institutis adjunxerunt, prouti hic infra sequitur atque dicitur.

Leges Inæ.

Inæ regis statuta.

Ego Ina Dei gratia occiduorum Saxonum rex, cum consilio & cum doctrina Cenredæpatris mei, & Heddæ episcopi mei, & Eorkenwoldæ episcopi mei, & cum omnibus meis senatoribus, & senioribus sapientibus populi mei, & multa etiam societate ministrorum Dei, consultabam de salute animæ nostræ, & de fundamento regni nostri, ut justæ leges, & justa statuta per ditionem nostram stabilita & constituta essent, ut nullus senator nec subditus noster post hæc has nostras leges infringeret.

Leges Ælfredi.

Hæ sunt leges quas Ælfredus rex constituit.

Et infra.

Rego Ælfredus ex in unum colligi & literis consignari jussi, multa eorum quæ parentes nostri observabant, quæ mihi placebant, & multa eorum quæ mihi non placebant rejeci cum meo sapienti consilio, & alio modo jussi observari. Quoniam non audebam tentare meorum (statutorum) aliqua scriptis consignare. Porro etiam me latuit quid eorum placuerit illis, qui nobis succederent. Ast cum deprehenderim sive in diebus Inæ cognati

mei, vel in offæ merciorum regis, vel in Æthelberti, qui primus Baptisma accepit in natione Anglica, ea quæ mihi justissima videbantur, exinde collegi, & reliqua neglexi. Ego Ælfredus occiduorum Saxonum rex omnibus meis sapientibus hic usus sum, & illi dicebant, quod ipsis omnibus bene placuerint ea, ut observarentur.

Fœdus Ælfredi & Guthruni Regum.

Hoc est fœdus quod Ælfredus rex & Gythrun rex, et totius Anglicæ nationis sapientes, & omnis gens quæ in Anglia Orientali habitat, simul fecerunt, & jurejurando confirmaverunt pro seipsis & pro posteris suis tam natis quam nondum natis, qui Dei vel nostram misericordiam curant.

Leges Eadweardi Regis.

Et infra.

Cum Eadweardus rex cum sapientibus suis exoniæ esset, inquirebant omnes quomodo pax eorum melior esse possit, &c.

Fœdus Eadweardi & Guthruni Regum.

Hæc sunt jura quæ Ælfredus rex & Guthirum rex sanciverunt. Et hoc est senatus consultum, quod Ælfredus rex, & Guthrun rex, &. deinde Eadweardus rex & Guthrun rex elegerunt & statuerunt, cum Angli & Dani pacem & amicitiam plene susceperunt, & sapientes etiam qui postea erant, sæpe & continuo eadem renovaverunt & bono adauxerunt.

Leges Æthelstani.

Æthelstani regis constitutio.

Ego Æthelstanus rex consilio Wulfhelmi archiepiscopi, & aliorum etiam episcoporum meorum præcipio præpositis cujuscunque urbis, &c.

Et

Et infra.

Ego Æthelstanus rex declaro, quod inquisiverim, quod pax nostra pejus observetur quam mihi placet, vel quam Greatanleæ dictum erat. Et sapientes mei dicunt quod hoc nimis diu pertulerim. Nunc inveni cum sapientibus qui exoniæ mecum erant ad natale Christi, quod, &c.

Leges Eadmundi regis.

Eadmundus rex congregavit magnam synodum in civitate Londini, sancto Paschali tempore, utriusque tam ecclesiastici ordinis quam politici. Ibi erat Oda & Wulfstan archiepiscopus, & multi alii episcopi contemplantes animæ suæ salutem, & eorum qui illis subjecti erant.

Et infra.

Eadmundus rex significo omni populo, tam senioribus quam junioribus, qui in mea ditione sunt, me contemplatum esse cum sapientum meorum consilio tam ecclesiastici ordinis quam laici, &c.

Leges Eadgari regis.

Hoc est institutum, quod Eadgarus cum sapientum suorum consilio instituit in gloriam Dei, & sibi ipsi in dignitatem regiam, & in utilitatem omni populo suo.

Leges Æthelredi regis.

Hoc est consilium quod Æthelredus rex, & sapientes ejus consultaverunt ad emendationem pacis omni populo Wodstoci in regione Merciorum, secundum Angliæ leges.

Senatus consultum de Monticolis Walliæ.

Hoc est concilium quod Anglicæ nationes sapientes & Walliæ consiliarii inter Monticolas constituerunt.

Leges Cnuti regis.

Hoc eſt conſilium quod Cnutus rex, totius Angliæ & Danorum & Norwegorum rex, cum ſapientum ſuorum conſilio ſancivit, in laudem Dei, & ſibi ipſi in ornamentum regium, & ad utilitatem populi; & hoc erat ſacris natalibus domini noſtri Wintoniæ.

The next and laſt thing I ſhall mention before I draw any concluſion from what has been offered to the reader, are the terms uſed by our Latin hiſtorians, to denote both the Saxon parliaments, and the perſons that compoſed them. The firſt is generally expreſſed by Conventus Sapientum, which is but a mere tranſlation of the Saxon words, the members it conſiſted of, are denominated Principes, (of which enough has been already ſaid) Proceres, Primates and Nobiles, all which words, however they may ſeem, in the vulgar acceptation, to exclude the Commons, yet, on a ſtrict examination, the contrary will appear a moſt manifeſt truth. For,

1. The words Primarii, Primates and Proceres, are all rendered by the Saxon gloſſariſt, Yeldeſt, Burgh wara, theſe, in our modern Engliſh, we call Port-Reve, Burſholder and Headborough, in ſome places by a more common expreſſion borrowed from the Norman dialect, Mayors; and in this ſenſe is the word Proceres uſed by the writers of other countries as well as our own; for Dufreſne ſays it denotes the Chief Magiſtrates in cities (*a*).

2. That in England, the words Nobiles and Nobilitas were uſed to ſignify Knights, (that they were Commoners in the preſent ſenſe of the word is agreed) ſeems clear, becauſe Knight was a name of dignity; they are in old authors ſtyled honour-

(*a*) Dufreſne in hac voce.

able;

able; in a record 9 Ed. 1. a knight has the addition of *Nobilis:* And lord (*b*) Coke ſays, "Nobi-
"les ſunt qui arma gentilitia anteceſſorum ſuorum
"proferre poſſunt."

From theſe premiſes I conclude,

1. That the legiſlative power was not ſolely in the Saxon kings. This is not only evident from what has been already ſaid, but alſo from what we read in two of our law books, viz. That their kings were originally veſted with that office by election, and ſworn to be obedient to, and ſuffer the law as other their aſſociate leaders, whom one of my authors calls the king's companions. The other, writing in the phraſe and terms uſed in the Latin of his time, ſays, That the king's courts, which conſiſted of the earls and barons, and the law, were both ſuperior to the king: but this point need not be laboured; for the very learned advocate for ſlavery, Dr. Brady, does not aſſert a legiſlative power ſolely in the king, but in the king and nobility, excluſive of the commoners.

2. From the entrance of the Saxons, for ſome time, they all perſonally aſſiſted at the Saxon parliaments. I don't mean every individual perſon that reſided in the kingdom, but every one of thoſe to whom the land was apportioned; for example, in Kent, where Hengiſt the firſt Saxon king ſettled himſelf, it ſeems all the landholders met to aſſent or diſſent to the making laws. Tho' this ſuppoſition ſeems clear from the firſt propoſition we laid down above, yet for the better evincing an hypotheſis ſo different from the uſages of our preſent time, I would further offer to the reader's conſideration the following obſervations.

1. Our Saxon anceſtors, in their own country, did all perſonally meet for the enacting laws in the manner we have related above; and every circum-

(*b*) Inſtit. 594 & 595. Camb. Brittan. 243.

ſtance

ſtance of the time conſidered, it cannot well be doubted; but that they did here as their kindred nations did elſewhere practiſe at firſt, and for ſome time retain the uſages they were bred in and accuſtomed to in their native country.

2. That by the feudal law, in its primitive inſtitution, all landholders were obliged to attend at the feudal courts; becauſe all the land was parted amongſt the conquerors, who had a right to give their aſſent or diſſent to any laws or orders there propoſed; whence we yet retain the expreſſion of a convention of the eſtates.

3. Why might not all the landholders of Kent, when that province was ſtiled a kingdom, as well meet on ſo great ſo important an occaſion, as the making of laws or giving judgments as they did afterwards, when it became an Earldom; and yet in ſtrictneſs are obliged, and by intendment of law all do meet at the ſheriff's turn and county court for buſineſs of a like but inferior nature.

4. Theſe meetings were in open places, which were capable of receiving a much greater number of people than came to them, becauſe, as has been already obſerved, there were no minute freeholders in thoſe early days.

5. That the land being divided amongſt the conquerors, who were antecedent to their conqueſt, a voluntary ſociety, no perſon that was not a member of it, and conſequently had not land, could have any voice in impoſing the laws on them who were the abſolute proprietors of the ſoil; therefore the Caorl, or huſbandman, was no member of the Witena Gemot.

6. Every thane being tenant by ſerjeanty, which was, as is already obſerved, only poſſeſſing lands in recompence for his ſervice, and in lieu of wages, he was no more than part of the family of one that was a member, or ſucceeded to one that

was

was a part of that voluntary ſociety which firſt conquered the kingdom, and therefore could have no voice in the impoſing laws on a ſociety, of which he was no member, but only a ſervant to one who was.

Tho' the individuals ever retained their native right of being governed by laws made by themſelves, yet when the exerciſe of the legiſlative power, in the perſon of every ſingle body natural, from their remoteneſs and number, became impoſſible, ſome change was neceſſary in the exterior forms and appearances, in order to preſerve a commonwealth on the ſame principles it was firſt formed and eſtabliſhed; and as the whole kingdom was divided into ſeveral little aſſociations, as I apprehend, ſome perſon out of every tything or burrough, the reader will recollect, that it is already proved they were co-ſignificant terms, came to the Witena Gemot to take care of the concerns and intereſt of the ſociety to which he belonged. For,

1. The aſſembly of the Saxon legiſlature, when they conſiſted of a ſelect ſet of perſons, were called Witena Gemot, or, an aſſembly of wiſe men; whence we ſeem to have derived the now well known expreſſion of the wiſdom of the nation, to denominate the parliament.

2. It is certain from the title of the Saxon laws, that the earls, biſhops and abbots were members of the Witena Gemot, or Saxon parliaments, and alſo others denoted in the Saxon language by the word Wita; that the earls, biſhops and abbots were the preſiding judges in the ſeveral communities both eccleſiaſtical and civil, that the people were originally diſtributed into, is not doubted, and that by the word Wita, we are to underſtand the preſiding judges of the communities they were afterwards divided into, is, I think, already

already proved; whence, it ſeems, we may conclude, that the Saxon Witena Gemot conſiſted of the perſons who preſided in each community, and it was but a natural devolution, when the exerciſe of the legiſlative power became impracticable in the perſon of every individual, that it ſhould veſt in every body politic, and that the perſon, to whom each community had by their own free choice given the precedency amongſt themſelves, ſhould be the delegate, or, as we now phraſe it, the repreſentative of the reſt. Hence, I think, it is clear, that the Commons, as now underſtood, were ever part of the legiſlature; becauſe, though perhaps the earls might not be elective, or annual officers, after the diſſolution of the heptarchy, as they were before, yet after its diſſolution the Graves of the hundreds or tythings, who were elective, being members of the Saxon Witena Gemot, the Commons remained a conſtituent part of the Saxon legiſlature.

Tho' the propoſitions here advanced are only ſupported by facts that occur in the monuments of the Saxon times, yet many uſages, whoſe origin we know not, but meet with ſubſequent to the Norman conqueſt, might be offered to the reader; ſome of which being palpably derived, and others being conformable to, or connected with what has been already advanced, would both illuſtrate and confirm the hypotheſis that is here offered to his conſideration; but as the conſtitution of the legiſlature in that period of time, will be the ſubject of the enſuing chapter, the reader will find them there, and, I hope, particularly obſerve, how well the hypotheſes we propoſe of both times, ſuit and tally with one another, that being the ſtrongeſt proof that can poſſibly be produced of the truth of both.

CHAP.

CHAP. III.

Of the Parliaments after the Conquest.

IN the period of time, which by the course of this Essay is to be the subject of this chapter, our enquiry into the constitution of the legislature would be most idle and vain, if the doctrine of those authors, who assert an absolute right of conquest in William I. is not first confuted. The arguments that have been offered by those who have endeavoured to debase our constitution, and sink us even lower than the brutal part of the creation, (for to reduce reasonable creatures to slavery, it being contrary to their nature, is doing so, and loading them with an intolerable burthen) have, many of them, been fully answered by their antagonists: nor is it my purpose to transcribe any thing they have offered. Facts from history and records are fully produced in their works; but if I may be allowed to use a logical distinction, I would observe, that tho' the arguments *a posteriori*, which prove William I. did not exercise a despotic power, have been with great diligence and reading put together; yet the arguments *a priori*, which prove he had no right to such power, have passed with little regard or notice, though in my apprehension the clearest and most cogent: for the question is not, whether William the Conqueror did do arbitrary acts; but whether he had a right to do them? Therefore to decide the present question, we are not to seek for instances, or reason from any acts of power he exercised, but to see whether he had any, and what right to such power; and if it can be proved he had none, those instances may be allowed to prove him a tyrant, but not that position they are used to maintain; and

and therefore, notwithstanding such instances, the right of the people subsisted, and however invaded by him, might lawfully be recovered, and exercised whenever they could find means to get the power of so doing; for no prescription can be from illegal acts, or against liberty. For the clearing this point, I will first state from Grotius and Puffendorf, when any, and what right is acquired by war. 2dly, I shall shew, that according to the rules laid down by those admirable authors, the Conqueror (to speak in the vulgar phrase) had no right by conquest over the generality of the English nation. 3dly, Since, subsequent to the Norman invasion, we were in some, though in a much less degree than is generally supposed, a mixed people; and a late author has thought fit to call the successors of the Norman chiefs, who assisted the Conqueror in his expedition, (on a previous promise of partaking what was got) for asserting their rights, incorrigible rebels (*c*): That the Conqueror, neither before nor after the acquiring this kingdom, had any absolute power over them, even no more than the emperor has over the sovereign princes in Germany.

Nations, who have no common superior, being in a state of nature, when they have any difference that they cannot settle in an amicable way, have usually recourse to force, which, like our disused trial by battle amongst private persons, (originally practised where the common superior, by reason of want of evidence, would not determine, so left them, as to that controversy, in a perfect state of nature) is an appeal to the great Superior of mankind, and Maker of the world, to determine the right: and as Providence (whose ways are unsearchable) suffers sometimes the unjust to prevail,

(*c*) Brady, in his Preface to his History.

this

this laſt method is not to be taken without juſt cauſe, that is, unleſs an injury be done, and all peaceful applications prove vain: ſo in every war, one party is moſt certainly a wrong-doer. Now, according to the juſtneſs of the cauſe, do the rules of the law of nature and nations determine the right of the victor: for if he had not juſtice of his ſide, when he began the war, or proſecuted it after tender of amends, he is a wrong-doer, and acquires no new right by ſucceſs, but thereby not only gives all mankind a right, but even makes it their duty, to reſtrain him. But if the cauſe of war be juſt, though the victor obtains a new right, yet the extent of this is not, I think, well ſettled; that which is beyond all doubt, is, that in juſtice he may take full ſatisfaction for the injury done by him that occaſioned the war, and for every individual hurt or inconvenience that flowed naturally or caſually from it; and we may go ſo far as to ſay, that ſome puniſhment may be juſtly inflicted on the wrong-doer; but to ſay as ſome do, that an abſolute property in the lives and fortunes of the vanquiſhed is, by ſucceſs, veſted in the conqueror, is a doctrine, as I conceive, inconſiſtent with humanity and reaſon: but we need not here diſcuſs that point, becauſe if that cruel poſition were true, yet it cannot be applied to the caſe in queſtion. For,

1. The Normans and Engliſh had no ſort of difference, but had lived not only in a peaceable, but even a friendly manner, with ſo frequent, ſo familiar an intercourſe, that 'tis ſuppoſed (they being, long after our Saxon anceſtors come from an unpoliſhed part of the globe) our Edward the Confeſſor directed them in the forming, or poliſhing their laws, and from them learned and introduced into this Iſle the manner of ſealing deeds, which yet continues amongſt us.

2. The

2. The Norman duke's pretence of coming, was a ſuppoſed title; therefore as war was not waged againſt the people, but the perſon in poſſeſſion, conſequently againſt Harold only, a late learned author (*f*) had reaſon to ſay, that the conqueſt that was made, was made over Harold, and not the nation: and the Conqueror himſelf underſtood the quarrel to be ſo, and therefore offered to decide it by ſingle combat (*g*).

3. William duke of Normandy, when he came into England, ſeemed to have conſidered war in the ſame light as it is ſtated above, viz. of an appeal to the ſupreme judge, and to have claimed this kingdom as his right by inheritance, or donation: that his pretences to it by either, or both theſe ways, were ill grounded, is moſt certain, but that the ſame were then dubious, is not leſs ſo; and conſidering the rudeneſs of that and the ſucceeding ages, 'tis no wonder this was ſo little underſtood; however, the crown he claimed, as legally due to him: now, whether we take the Norman duke's title by blood or donation, clear it is, that he could have no more extenſive power over thoſe who did not make themſelves wrong-doers by oppoſing him, (ſuppoſing that could make them ſo;) than the perſon he claimed under had, and what that was, is ſufficiently explained in the preceding chapter.

As the Conqueror's getting the diadem of this realm gave him no right to deſpotic power over the Saxons, ſo neither had he any over his own victorious army. To ſtate this matter fully, we muſt take a ſhort view of the Norman ſettlement in France.

(*f*) Hale's Hiſtory of the Law.
(*g*) Brady and Tyrrell's Hiſtory in the Life of Harold.

Rollo,

Rollo, duke William's ancestor, was the leader of a confederate army, consisting of Danes, Norwegians and Swedes, (for all these people are denoted in historians by the general name of Normans (g). He himself was a Dane; and as these people were not born subject to one prince, consequently Rollo could have no pretence, much less a right, to any power over at least two parts of them, but what was derived from their own free consent. They conquered Neustria, and from themselves called it Normandy.

The land was divided amongst the conquerors, and laws enacted for the well ordering their new state, by the consent of the other (h) chiefs and superiors, and not by Rollo's own single power. Rollo's legitimate line failing in duke William's father, he, by consent of the barons, was elected to succeed him, and consequently could have no right either to the dukedom, or any power but what was voluntarily conferred on him: as all his subjects were so by their feudal tenures (the extent of that power is stated above;) were there no other evidence that the Conqueror's army was composed of an association entered into by the free will of the united leaders, it ought to be believed; but we have an express testimony of this fact; for we read, That when duke William desired a supply of the Norman barons, for asserting his claim to the crown of England, they told him, "That the "Normans were not bound by their allegiance to "serve in foreign wars, and no considerations could "bring them to raise a supply, though William "Fitzosbert, a man generally beloved, both by "duke and people, promoted it with the utmost "zeal, and, to encourage others, engaged to build

(g) Grotii Proleg. ad Hist. Got. 11. &c. Mezeray ad Annum, 889.

(h) Benage-Coutume de Normand. p. 2. &c.

 "forty

"forty ships at his own charge, for the service of "the war.

"The duke finding himself disappointed in this "publick way, tries other methods; and sending "for the wealthiest of them, one by one, speaks "them fair, and desires that each would contri-"bute something towards the war. This drove "them to a sort of emulation, who should be "most zealous in the assistance of his prince, and "made them promise largely, and an account be-"ing taken of the contributions, a sum beyond "expectation was raised in an instant: matters "being carried thus far, he sollicits his neigh-"bouring princes for aid, the earls of Anjou, "Poictu, Mayne and Bulloigne, upon this en-"couragement, that they should have a share of "the lands in England (*i*)."

Thus one author, in an undetermined manner, represents the Norman barons voluntarily aiding duke William; but from another we learn they did not all do it, for one of the principal Normans, notwithstanding all the duke's plain and artful methods, persisted in his refusal, and gave much better and honester reasons for so doing than the other could for asking it (*k*). From these authors it seems clear, especially if the Conqueror's army were not paid, and that they were not is highly probable, that he and his associated chiefs were, if I may use the expression, partners in the profit and loss of his expedition: that this was the sense of his companions, and their posterity, is certain; nor is it less so, that this was not gainsaid by his successors; for earl Warren, when his title to the immense estate that was given to his ancestors by the Conqueror was questioned, and that too by

(*i*) Camb. Brittan. 211. vide the Anon. History at the End of Tayler of Gavelkind, &c. (*k*) Daniel, 34 & 68.

one

one of the moſt powerful kings that ever filled the Engliſh throne, produced an old ſword, and unſheathing it ſaid, Behold, my lords, here is my warrant, my anceſtors coming into this land with William the Baſtard, did obtain their lands by the ſword, and I am reſolved with the ſword to defend them againſt whomſoever ſhall endeavour to diſpoſſeſs me; for that king did not himſelf conquer the land and ſubdue it, but our progenitors were ſharers and aſſiſtants therein (*l*). That the Conqueror had no deſpotic power over his army when he landed, may be inferred from what is already ſaid; that the acquiſition of this kingdom by their means could give him none is obvious, as it ſeems clear, that they would not have been content in return for the gaining a victory for their general at the hazard of their lives, to be debaſed from freedom to ſlavery; that is, from the moſt happy and glorious ſtate of human nature, to the moſt vile and abject, I would ſay miſerable too, if people who can prefer life with bondage to death, could merit any degree of compaſſion.

Before I cloſe this enquiry into the extent of the Conqueror's lawful and rightful power, I ſhall anſwer two arguments that have been uſed to aſſert his title to arbitrary dominion, though one of them from its own weight merits no conſideration; yet being urged by ſo great a man as Salmaſius, and not ſo fully anſwered by Milton as it ought, muſt not paſs unnoted; the argument I mean is, the uſual addition of Dei Gratia to the titles of our kings. See then its origin as it is related by a monk and a Frenchman, circumſtances that will clear the author from any imputation of partiality to the liberty of mankind; the perſon I mean is the learned and honeſt father Mabillion (*m*), who

(*l*) Blunt's Tenures, p. 9. Tyrrell's Hiſt. to 3 vol. p. 30.
(*m*) De re deplomatica.

tells us, That the first king of France, (and he was the first prince in Europe also) that used that title, was Pepin, and that he assumed it because he came to the crown by extraordinary means: now the truth is, Pepin usurped the crown of France, and had no other title but force. Such was the first king who so stiled himself, and such was the motive to it; since that time it has been the addition of the dukes of Venice: (n) Lanfranc, archbishop of Canterbury in the Conqueror's time, used this addition in writing of himself, and others did it when they addressed themselves to him; in king Stephen, or Henry the second's time, the bishop of Winchester so stiled himself: and even since the restoration, in the writ by which that truly great and good man Dr. Juxon (who after having filled the highest station in the state with singular reputation, had been advanced to the See of Canterbury) is summoned to parliament, he is stiled Dei Gratia Archiepiscopus Cantuariensis (o).

The other argument is indeed more specious, but on due consideration it will be found as inconclusive; it is this, On the conquest (say the patrons of tyranny) the government was a sort of military government, the military tenants composed, and were in effect a standing army. Though the general observations which were made in the first chapter on all the European governments, which need not be here repeated, seem sufficient to answer this; yet, for the clearing so material a point, let it be further observed, how many of the individuals that composed the army were immediately under the Conqueror's command; and it will be found, that not one in fifteen, if I said not one in thirty were so, I believe I should not exceed: again, every one of the military tenants were the

(n) Eadmerus, p. 12 & 36. Madox formulare in the specimen of hands. (o) Petty, of parliaments.

pro-

proprietors of much the major part of the whole kingdom, and attended in the army to perform their military service, by virtue of their knights fees; now every knight's fee, at the lowest estimation, is supposed to be 20l. per annum (p); that sum two hundred years ago, as has been proved by the late lord bishop of Ely, was equivalent to 140l. To enter into all the proofs that might be given, of its proportion to much greater sums in the Conqueror's time, would be deviating too far from our present purpose, and is the less necessary, because none but an utter stranger to the antiquities of his own country, and indeed to those of others, can doubt that 20l. at the conquest was equivalent to 300l. nay, I truly believe 500l. per annum, that is, the land that would then yield but 20l. would now produce the other greater sum, and 20l. would then purchase as much corn, or, other necessaries of life, as the biggest of the other sums would now: view then the Conqueror in his military capacity, and at the head of his army, or to speak properly, of the militia, and the proportion betwixt the number of his vassals, and those of peers considered, he will appear no more absolute over the peers in the field than in the palace: again, consider, that these military persons were gentlemen of great estates, such at least, as are at present deemed a sufficient qualification to serve in parliament for any city or borough: now these undeniable truths are put together, can the most bigotted patron of arbitrary power believe such an army would be the wretched, and abject instruments of the Conqueror's tyranny, and their oppression?

From stating what power the Conqueror could legally exercise, it is a natural transition to enquire

(p) Instit. 596, Stat. de Militibus, Camb. Brit. 256, &c.

into what he did exert, by which a ſcene very different from what ſome may imagine would be diſcloſed; but the conſideration thereof in this place muſt be determined by the ſubject of this Eſſay, and therefore the members of the legiſlature being ſo by virtue of their tenures, our preſent diſcourſe of the Conqueror's actions muſt be reſtrained to this point.

The Saxons and Normans uſed very different means in their ſettlements, the former deſtroyed the people, and poſſeſſed themſelves of the whole land; the latter had no ſuch deſign, nor indeed power ſufficient to execute it: and as the Conqueror himſelf only claimed power, and that too by title, his confederates had the like views; ſo all theſe invaders purpoſed the ruling, and not deſtroying the former inhabitants: the Conqueror aſſumed the regal ſtate as his own by right, and the demeſnes of the crown as thereunto annexed; having ſeized both, he treated all the Engliſh that oppoſed his acceſſion to the crown as rebels, and diſpoſſeſſed them of their lands, which were diſtributed amongſt his own confederates, with this remarkable difference from what was done by the Saxons, that theſe extirpating the Britons, gave their chiefs, for himſelf and his followers, one entire diſtrict, whereas no perſons on the conqueſt being diſpoſſeſſed, but ſuch who, by their oppoſing the Conqueror, and according to the known rules of the feudal law, ſuppoſing the ſo doing was unlawful, forfeited their antient right, in conſequence thereof moſt of the Conqueror's confederated chiefs had lands aſſigned them, that were oft not only disjoined from one another, but alſo ſometimes in different counties of the realm. The neutral Engliſh, tho' they fared better, yet did they alſo in ſome degree feel the effect of the Norman's

love

love of power. In the rural tythings (so for want of a better word, I take the liberty to term those that did not consist of trading persons, as I shall hereafter these trading ones) were placed Norman chiefs, and for ought I can find, every Norman so constituted chief of the rural tythings, as he succeeded to the Saxon Gerefa's, he did also possess the same, and no greater preheminence than they did; save only that this superiority was first in them made hereditary: for had it continued, as in the Saxon times elective, the bulk of the electors being Saxons, no Norman could have been preferred: these chiefs, by Norman appellations, were called Barons and Seigneurs, more contractedly, Sires, and their estates Baronies, or Honours. That an honour consists of many manors, even in the present sense is agreed, tho' of what number none have conjectured, much less defined. If what has been offered concerning these tythings is received for truth, we may determine it to have consisted of at least ten manors, because every tything consisted of so many; and every tything, when the superiority became hereditary, constituted one barony, or honour. The trading tythings generally continued in the same state they were in before, which I do not attribute to any peculiar kindness the Normans had to them, but rather, to the contempt a rough and martial people had of manual occupations, and all things out of the compass of their own knowledge: whatever was the cause, sure it is, that generally, if not universally, they were left in their original state, and remained so, many little commonwealths, retaining, as some yet do, the Saxon officers, with their Saxon names, courts, and even the Saxon denominations of boroughs, to distinguish themselves by. Thus did the original equality, so conspicu-

ous in the Saxon establishment, which before the conquest was universally diffused thro' the whole kingdom, become confined to the boroughs where it yet subsists.

The Conqueror's title being disputed, prudence induced him and his confederates to have an eye to the securing their new acquests; and the regulation of tenures in Normandy and France, whence they came, naturally determined them to the reducing this kingdom, to as great a conformity as they could to the usages of those countries: hence arose the regulating what number of soldiers the Norman chiefs, or the old English that were continued in their possessions, or advanced to power, should bring into the field; and also the subjecting the ecclesiastics themselves to the like duty. Thus were all the single immediate tenants of the crown, one only excepted, bound to do military service, in case of an invasion or rebellion, the trading ones, where the whole community held of the crown, being by the occupation of their members unapt for arms, and qualified to contribute in their purses, were at the same time (if I guess rightly) obliged to pay a certain annual sum towards the support of the government, which I conceive to be the same we read of soon after the conquest, under the appellation of a fee-farm rent.

Besides these tenures visibly founded on the Saxon constitution, there was one which, in deference to the sense of others, rather than for want of footsteps of it in the Saxon times, I omitted to mention before; the tenure I mean is grand serjeanty, for petit is not here considered, because, however, the lord Coke's division of serjeanty may be applicable to our law, as understood when he wrote; yet surely it was otherwise in the time we now discourse of: I take the thing then to have

stood

stood thus; where the service was of a public nature, it was, I conceive, called grand serjeanty; where of a private nature petit serjeanty: thus, if land were given for the service of steward, constable, chamberlain, or marshal of England, such gift and service created a grand serjeanty; but if for service of steward of the houshold, master of the horse, or chamberlain of the houshold, these respecting only the person of the king, and not the public; such services as they created no tenure of the public, so did they, as I conceive, make only a tenure by petit serjeanty.

The army the Conqueror brought with him was too weak to keep the English in an unwilling obedience, and yet much less able to do so, when many of them returned a year after the invasion to their native France; hence the Conqueror probably sensible, that it could not be the interest of the minority to keep up distinctions, acted on a view of consolidating both the English and French into one people, and for this purpose introduced hereditary wardships and marriages. On the same motive it is highly probable, he did not subvert, or dissolve the Saxon government, but adapted the rewards of his fellow-adventurers to their constitution, and left the Saxon earls, as in their institution officiary, and the counties under their administration; but undermined the power he could not safely destroy, by dismembering the barons estates in a manner from the counties, and making them recognise no superior but the crown.

The Conqueror gave part of the land that he retained to himself, under the reservation of military service, to his own immediate followers; so did his confederates, who, holding their lands by the service of a determined number of soldiers, enfeoffed their own immediate followers with some portions of what was assigned to them for their share,

share, under reservation of such service. These lands so gitten were called Knight's Fees; and it is highly probable, that the Conqueror and his associates did compel many of the old English to hold their antient possessions by the same tenure; the number of them exceeding sixty thousand. As they all agreed in the creating knights fees, so did they in one uniform manner divide, or which I think more probable, continue the division of the residue of their possessions in the same manner as the Saxons had used; some part they retained in their own hands, other part was allotted to husbandmen, in lieu of hire; for as narrow as their commerce was, they had not money enough to answer its occasions. These were to till and manure such portions as they retained in their own hands, and were called Tenants in Socage; a word which signifies the service of the plough, and properly were they so termed, since till Henry the second's (q) time they actually performed that service, then indeed money became more plentiful: and as the reason for the institution of that service was thereby gone, the service itself vanished, and in lieu of it those tenants have ever since paid a rent; the residue was either left to the occupation of the bondmen, or, lying neglected, was called the Waste (r).

All the forementioned tenures subsisted till the twelfth year of king Charles II. at which time the military tenures were abolished; the soccage tenure yet subsists, and so does the bondmen's, whose successors are the copyholders: and though time has dealt very favourably with them in all other respects, they yet retain one mark of their original servitude; for as of old, bondmen were not reckoned members of the commonwealth, but part and parcel of their owners substance, so were they

(q) Hale of Sheriff's Accounts, p. 14.
(r) Bacon's Elements of the Law, 30.

therefore

therefore originally excluded from any ſhare in the legiſlature, and their ſucceſſors ſtill continue, without any right, to vote at elections, by virtue of their copy-holds!

From this account of tenures 'tis obvious, that the Conqueror, to ſpeak in the vulgar phraſe, had two ſorts of immediate tenants, viz. thoſe that held of him as chief of ſome ſeigniory, who were his particular followers at the time of his invaſion; the ſervice of thoſe was annexed, or, as we phraſe it in the law, regardant to ſome particular ſeigniory, and paſſed at leaſt latterly by the grant thereof to any ſubject; the other ſort of tenants are thoſe who held of him as chief of the great ſeigniory of the kingom, and had confederated with him, as related above, and had followers of their own; the ſervice of theſe was not transferrable (*f*): of theſe only I deſire the reader to underſtand what will be hereafter ſaid concerning tenants in chief, or tenants of the crown.

Thus in this well digeſted form of government, by a diſpoſition concerted with equal wiſdom and juſtice, all did in perſon or in purſe, by a ſtated and known rule, and determined proportion, contribute towards the neceſſary and only ends of all governments, the preſervation of the community; I ſay, by a determined proportion, becauſe this ſeems certain by what is already advanced, and might be further evinced by an infinite number of arguments; one only ſhall be here inſiſted on, which is this, on the diſtribution of the land, certain ſervices were ſtipulated to be performed in lieu and recompence, or return for it (*t*): now, if Lord, or King, could demand more, or had a deſpotic power over their vaſſals, ſuch ſtipulations were vain and ridiculous; for why ſhould a ſupe-

(*f*) Dyer, 40. (*t*) Vide Strykii Jus Feudale, 309.

rior

rion say to his vassals, You shall, for this land, do me this or that service, or else I'll have a right to turn you out; if the superior had an absolute power to command the vassal to do that, and every other particular, which pride and ill-nature rioting in absolute power might prompt him to require?

Under these regulations were the ordinary charges incident to the public service adequately provided for. But as no human prudence can foresee all future occasions, and the duties of all persons were, by feudal contracts, regulated; and contracts once made cannot be dissolved or changed, but by the consent of all persons who were interested in them; therefore it was as necessary, under the Norman, as before in the Saxon establishment, that the consent of the people should be obtained for such further provision, as any emergency might render convenient and necessary. All writers and parties are, I think, agreed, this was done by a convention or assembly of the barons: however widely they differ in determining who were, so at the time we now treat of; 'tis therefore incumbent on me to fix this, for which purpose I will shew the etymology of the word, and its notation from records, and other ancient monuments.

Authors differ exceedingly as to the etymology of the word Baron; their opinions the curious may see in the books referred to in the note (u); that which I conceive to be the best, is here offered to the reader's consideration.

The old Teutonick word, Bar, that signified Man, and in its more restrained sense, a Freeman,

(u) Spelm. & Dufresne in voce Baro. Hicks Differt. Epistolar. 146. 4 Instit. 45 & 46. Doddridge of Nobility, 54. Cambd. Brit. 238. Petit. 108. Arg. Antino. 20. Madox's History of the Exchequer, 134. Formulare 2 & 128. Brady of Boroughs, 26. Coke on Littleton, 111, &c.

was

was carried by the Germans into all their conquests, though founded and spelt with some diversity; in Spain they wrote it, Var, and now Varo, our Saxons, War, the Normans and French, Bar and Baro (w).

This word does not occur in the Longobardick system of the feudal law, nor, if I have observed rightly, in any writers older than some of the laws published in Lindenburg's collection (x), in which it signifies no more than a Man or Freeman; nor is it to be found in any of our monuments older than the conquest, except one of Edward the Confessor (y), whence he having been so conversant with the Norman; and from its frequently occurring in the Custumary of Normandy (z), I am now persuaded, notwithstanding what I have somewhere wrote in the disjunctive, as if it were dubious, whether this word was introduced into this kingdom by the Normans, or the Danes; that it was derived to us from a Norman original, and became more common in this kingdom by, and at, or soon after the conquest: but I incline to think, its establishment owing chiefly to the use of the Latin tongue in our public acts, rather than to that of the Norman French, since the antient barons affected the appellation of Sire, not that of Baron (a); and even at this day, in the writs of summons to parliament, the Barons are so stiled. After the transplanting this word into England, we find its signification varied; at the time of the conquest, it signified the immediate tenants of the territories of that seigniory that were the subject of the discourse; and, per eminentiam, if singly used,

(w) Hicks Gram. Theotes.
(x) Leg. Aleman. 76. Lex Ripuar. Tit. 58.
(y) Somner of Gavelkind, 207.
(z) Edit. per Benage, 281, &c.
(a) Selden's Titles of Honour, 448.

(and

(and not determined by other circumſtances) it denoted thoſe of the crown, that is, all perſons who held of the public; and like the word Tenant in capite, did not denote tenants by any particular ſervice, but might with equal propriety be predicated of all that were ſo. They were, as we have ſeen, of three kinds, viz. Tenants by military ſervice, Tenants by grand ſerjeanty, (in the ſenſe we have explained the word in) and the Boroughs.

That the reader may the better judge of the truth of this complex propoſition, I ſhall reſolve it into four ſimple ones, and under each offer ſuch reaſons, as in my apprehenſion prove them.

1. The word Baron was at, and for ſome time after the conqueſt, uſed of, and applied to every tenant in chief of the crown, by whatever tenure he held.

1ſt, 'Tis the diverſity of the ſervice that the tenant is bound to perform, that creates a difference in the tenure; therefore, if a barony was a tenure different from all others, it muſt be ſo by the ſervice the tenants by barony were obliged to perform, which none pretend to define, no, not ſo much as to gueſs at; yet two authors wrote treatiſes expreſsly on tenures, and Coke commented on Littleton's; but neither in them, nor any other of our numerous law-books, is there any mention made of the ſervice of Barons, as diſtinct from other military tenants; and it would be ſtrange, very ſtrange, to ſuppoſe, that when ſuch authors deſcend to the meaneſt tenures, even villenage, they ſhould ſay nothing of the chief, if really a tenure.

2dly, The kingdom was only one great ſeigniory, different from the leſs, not in its conſtitution, but only in extent of ground, and grandeur of its Convaſſals; therefore 'tis reaſonable to ſuppoſe, that the word Baron, when applied to the great ſeigniory,

ſeigniory, denotes the perſons that are qualified, as the perſons are that it denotes, when applied to the leſs; and that the perſons who owe ſuit and ſervice to the great Court of the nation, are ſo related to it as the ſuitors of the leſſer Court-barons, with regard to the ſubordinate ſeigniories: now, 'tis beyond doubt certain, that the immediate tenants of every leſſer ſeigniory were ſtiled Barons of the Seigniory, their aſſembly, the Court-Baron; that all the immediate tenants were bound to attend, and that ſuch attendance was part of the ſervice by which they held their land; nor is it leſs ſo, that every ſeigniory conſiſted of military perſons, officer of the ſeigniory, and tenants that yielded profit, inſtead of military ſervice; whence it ſeems to follow, that the parliament conſiſted of the like ranks and order of men; and that they were alſo denoted by the word Baron.

3dly, In a charter of Henry I. (*b*) the word Baron is coupled with Dominici, to denote the immediate tenants of the ſeigniories in the king's poſſeſſion; which addition could not be neceſſary, if the word, ſingly uſed, did not ſignify the immediate tenants of the great Seigniory of the realm.

4thly, Henry the firſt's convention at Saliſbury, for the doing homage to his ſon William, was in the firſt chapter mentioned from Eadmerus, to fix the ſignification of the word Princeps, and the expreſſions uſed by other hiſtorians in their narrative of this aſſembly, will ſerve to explain the word Baron; all the lay-perſons that are mentioned by two other hiſtorians as preſent, being compriſed under the name of Barons. Now, the arguments that were produced to prove the tenants in chief were compriſed under the word Principes, proves the like of the term Baron.

5thly, It is certain, that the prior of Chriſt's

(*b*) Brady's Hiſtory, 144.

church

church at Canterbury was a Baron (c), yet 'tis as sure, that he did not hold by any military service of the crown, but only in chief (d), and, as I conceive, by homage and fealty.

2. The tenants by grand serjeanty were Barons, because,

1st, In the directions given for collecting a tax on the barons by king Richard I. the tenants by serjeanty are excepted, for which there could be no reason, if they were not comprised under the appellation of Barons (e).

2dly, All the lands that were, as far as we know, ever held by grand serjeanty, were in the hands of the barons.

To this proposition I am very sensible one objection will be made, with relation to the tenure of lands now in the antient family of the *Dymmocks*, by the service of being the king's champion, on the once most important solemnity of the coronation; to which I answer, 1st, It does not appear, that any such tenure did subsist at the times we now discourse of; for the first instance of it in history is that at the coronation of Richard II. (f) 2dly, For ought appears, this tenure, if then subsisting, might rank the tenant amongst the barons, which they might possibly lose, on the exclusion of the lesser barons. But 3dly, and lastly, I conceive that this was really no tenure by grand serjeanty, in the sense we have explained these words. For the clearing this point, 'tis to be known, that antiently, in many cases, controversies were decided by single combat betwixt the parties, before the peers. Our old history and law books are full of instances of this nature, which need not be here

(c) Somner's Antiquity of Canterbury, p. 299.
(d) Somner of Gavelkind, p. 210.
(e) Spelm. Codex legum Anti. 350.
(f) Tyrrell's History, 3 Vol. 830.

inserted;

inſerted; women, for their weakneſs; eccleſiaſtics, from their profeſſion, were permitted to appoint others to fight for them, who were called their Champions: and no doubt the regal dignity entituled the king to the like privilege. Now the Champion being only authoriſed by the king for this particular purpoſe, his ſervice ſeems related to the ſeparate benefit of the king, and not to that of the public; and therefore, in the ſenſe we have explained theſe words, his tenure was petit, and not grand ſerjeanty.

3. All the immediate military tenants of the crown in the Conqueror's time, and till ſome time after king John's Magna Charta, were compriſed under the general appellation of Barons.

The military tenants of the crown have been divided into three claſſes, viz. Earls, Barons, and Tenants by knights ſervice; of which in order.

Earls are by our more modern authors diſtinguiſhed into two kinds, viz. Earls Palatine, and Earls without that addition; but I ſhould deſire the reader to conſider the following reaſons before he gives into the vulgar opinion.

1ſt, In foreign countries, where the word Palatine is more antient, the difference does not conſiſt in their enjoying, or participating more or leſs of the ſovereignty in their ſeveral territories, but in their different ſervices they were to render to the collective body of the ſtate, which was briefly this; the Comes Palatinus, or Earl Palatine, was the chief juſtice of the palace, reſembling our Eldermanus totius Angliæ in the time of the Saxon government, after to the Juſticiarius, or Seneſchallus Angliæ in the Norman time, and the major of the palace in France, and the only palatinate in Germany is that of the Rhine, whoſe office was to preſide in the judicature of the empire (c), which

(c) Strykii Jus Feudale, 112.

sitting in the palace, he is thence in High Dutch called Paltz Grave, which signifies Judge of the Palace.

2dly, In England, Durham is now known under the stile of a Palatinate, yet 'twas first given to the bishop by king John, who, it seems, from his saying, he made a young earl out of an old bishop, thought he made him an earl, by giving him the county, but was not then acquainted with the word Palatine; and the bishoprick of Durham, though since denominated a County Palatine, was in antient grants and records, only stiled a Liberty, which term, in our law language, is equally applicable to the Isle of Ely, and every other district that holds plea within themselves (*d*).

3dly, The first palatinate that is supposed to have been created in England, is Chester; but 'tis obvious, that term was not included in the grant to Hugh Lupus: and a very curious and diligent searcher into the antiquities of this kingdom, even the great (*e*) Mr. Cambden, assures us, that neither he, nor any of his successors, ever had the stile of Comes Palatinus in any grant or record.

4thly, The earldom of Shrewsbury was termed a County Palatine; and yet 'twill not be found, that the earls of Shrewsbury had any prerogatives superior to those of other earls.

5thly, The word Palatinus, whence our English Palatine is derived, comes from Palatium, which was used to signify the Court of Justice; and indeed in no other sense but with respect to the administration of justice is the word used; the administration of justice in the counties was equally vested originally in the respective earls of each. And all earls had an equal share in the great court of the whole kingdom; so all earls

(*d*) Cambden's Britan. 934. (*e*) Vincent against Brook.

here

here seem to have been originally equally, that is, not at all instituted to that appellation.

The supposing a real distinction between earls and barons, so antient as the times we speak of, seems also ill grounded; for they are by very good authors said to be the same (*f*); and the definition Selden and Camden give of a Baron, does (*g*) equally agree to both; all the difference I can find between Earls and Barons, whilst both were feudal, is only this, that the barons were the chiefs of one tything, or several manors, that were given as aforesaid, by the Conqueror, to one of his confederates, who thereby became the superior thereof; whereas, the Earl with us was the superior of the division of the Saxon shires: nor, in my apprehension, without making this the Differentia proxima, can any definition be given of a Baron, that does not agree to an Earl; and indeed this seems to have been the notion of antiquity; for the collective body of our nobility, immediately on the conquest, as in Normandy, were, as at this day (*h*), denoted by the general term of the Baronage.

It has been already remarked in the first chapter of this Essay, that all the earls and barons in Europe did antiently hold of the kingdom, not of the king solely: I shall therefore here only add such observations as may serve to evince, that it was so on the conquest in this particular kingdom.

Many of the persons who came over with the Conqueror, had no sort of relation to, or dependance on him, antecedent to the conquest: those who were Norman barons, held of the community, not of him solely; and 'tis by no means

(*f*) Selden's Titles of Honour, 553.
(*g*) Ibid. 353. Camb. Brit.
(*h*) Madox's History of the Exchequer, 133. Coutume de Norm. 287. Finch. lib. 2. c. 1.

 probable,

probable, that they would defend to submit to the same subjection to him with his own immediate vassals.

2. Not one of our Norman kings, though great extenders of the prerogative, ever assumed, and many disclaimed all pretence to the depriving a baron of his barony, without the judgment of their court, that is the parliament: and some have demanded the judgment of the peers against barons whom they thought delinquent (*i*).

3. All the old memorials, and nearest the time I now treat of, commonly call the Barons, Barones Regni, not Barones Regis; so they are stiled in the Register (*k*), a book of as great antiquity and authority as any in the law; so are they termed by lord Coke *, and in pleading, which requires the greatest nicety and exactness, the form is at this day, Unus Parium Regni (*l*).

The sovereignty of the baronage over their vassals, that is not an absolute dominion, but such as the king had by law over his, may be proved by four kinds of arguments, viz. their origin, of which enough has been already said; the names they are denoted by, the words used in their creation, and the power they exercised: of the three last in order.

They are frequently, in old writers, stiled Principes, Reguli & Reges (*m*).

The only form of making an earl, which is supposed so old as the Conqueror's days, is that by which Hugh Lupus was created earl of Chester; the words are, Tenendum ita libere ad gladium sicut ipse (the Conqueror) tenebat regnum Angliæ (*n*).

(*i*) Brady's History, 229 and 657.
(*k*) Fol. 179. * 3 Instit. 46.
(*l*) Salkill's Reports, 509.
(*m*) Dufresne voce Par; Taylor of Gavelkind, 40.
(*n*) Davis's Reports, 62. Dodridge's Principality of Wales, 124. Cambden's Britan.

Power

Power the barons exercised equal to any king of England, that has not exceeded the law; they made subinfeudations, which by the feudal law in its purity, both abroad, and as it seems by the statute of Quia Emptores terrarum, here none but sovereigns could do, because homage and fealty, the only ties betwixt prince and people, was incident to them; they also made laws in their courts, and judged there (o); which power was so far from being an usurpation, that by the law of Henry I. it is expressly provided, that the baron's people shall not be obliged to abide by the determination of the king's court (p); and therefore earl John's man refused to answer even an accusation of high-treason in the king's court; and also gave that for a reason, why he would not be security for the payment of the king's ransom (q); though by the feudal, a vassal is bound to redeem his lord out of captivity, under pain of forfeiture. They coined their own money to king Stephen's time (r), which we find noted in those times as a proof of independent sovereignty (s), gave boroughs a right to send members to parliament, exemptions from other courts, and power to hold plea (t), pardoned treasons, felonies, &c (u). and their tenants and people paid and yielded them the self-same aids, tallages, and services that the king had of his, nor were their vassals talliable to the king (†).

Lastly, The vassals of the lords did homage, and swore fealty to them, and as it seems, not to

(o) Davis's Reports, 62. Answer to the Jannes, 16. Daniel 50. Spelm. Codex Leg. Antiq. 345. Brady's History, &c.

(p) Spelm. Codex, 314. (q) Brady's Hist. 404 and 443.

(r) Hale of Sheriffs Accounts, 4.

(s) Grotii Historia Gott. 386.

(t) Brady of Burroughs, 44, &c.

(u) Vide Stat. 27. H. 8. cap. 4. 24.

† Madox Hist. of the Exchequ. 498.

the king at all; for no person could be a liege-man to two lords; and earl John's man declared he was not bound to the king by homage or fealty, and they did both in like form that the king did to him*. To explain this matter to readers not versed in the feudal law, it is to be noted, that fealty might be sworn generally, and then it was called an allegiance, and the person that took it was called such a lord's liege-man, or, with an exception, as saving the faith that I bear to our sovereign lord the king, or under a limitation, as for land and tenements I claim to hold of you. Originally the barons people swore fealty absolutely, and so were liege-men to the barons. This was so far from being an usurpation, that the vavassors relief is by a law of the Conqueror's directed to be paid to his (x) liege-lord. The Conqueror in one of his writs mentions the abbot of Ely's liege-men (y), and the barons liege-men are mentioned by Henry I. in one of his charters, and the abbot Ramsey's liege-men are also mentioned under the same king's reign; and this unlimited manner of doing homage, without any reservation of the like duty to the supreme lord, continued abroad till the year 1152, and was practised here in Henry II. time (z), and for ought I can find, was first disputed in Edward I. and was last finally abolished by an act of parliament passed in 17 Edward II. which prescribed the form that the lords vassals shall do homage and swear fealty in; yet after, in Edward II. time, even in the famous act of the 25th of his reign, the breach of the oath of fealty in killing king or lord is denoted by one common name of treason. The attendance of

* Brady's History 534. Spell. Rem. 59.
(x) 2 Inst. SL. Saxo 223.
(y) Brady's Appendix to his History, p. 4.
(z) Spelm in voce ligeantia.

their

their vassals at court-leets is in our old law books, called Suit Real (a), and the word Real is an antient French term for Royal (b). Lastly, if the year books, which, considering the manner they were collected, are little less than records, are to be believed (c), till Edward the first's time (d), who first introduced the form of petitioning the king, he and the barons were impleaded in the same manner, even in entries on disseisins and all manner of actions (e), according to Cavendish, who was soon after advanced to be chief justice (f), and in the same king's reign Wilby said he had seen a writ in this form, Precipe Henrico Regi Angliæ, &c. (g)

If any one, not versed in the feudal law (for those that are will not) should object, that the barons could not be sovereigns over their own people, because they did homage, and swore fealty, to the king: I answer first, it is already proved, that they were done and due to the community of the realm, and not to the king only. 2. It is noted above, that these were things incident to all feudal tenures, which were only unequal leagues. 3. That the same objection lies against the sovereignty of the German princes in the Empire, which has been asserted by the two greatest Civilians that ever lived, to whose writings, for brevity's sake, I refer the reader (h).

The third class that, as is observed, the military tenants of the crown are by some divided into,

(a) Pas. 12. H. 7. fol. 16. a. Old Tenures, last chap.
(b) Answer to Petty, 134. Dyer's Reports, 44.
(c) Pl. 12. Tyrrel's Appendix to the thid volume of his history, 70. Tyrrel's History, 3 vol. a. 73.
(d) Plowden's Preface to his Commen. p. 1.
(e) Hill. 22. Ed. 3. 3. Mich. 43. E. 3. 22.
(f) Vide Dugdale's Catalogue of the Judges.
(g) T. 24. Ed. 3. 55.
(h) Vinnii Quæstiones 105. Grot. de J. Bel. & Pac. lib. 1. c. 3. s. 23. par. 2.

is to be now the subject of our consideration; but, the truth is, this division arose from an ignorance of antiquity, and judging of what was 700 years ago by modern times, which has led many into errors, and been the foundation of much confusion. In the present case, if by the word military tenant, is understood one who held immediately of the crown by the military service of leading a certain number of men, then, no doubt, they were either earls or barons; for such was part of both their duties; but then this service is not distinct from theirs: on the other side, if by tenant by military service is meant one who held by the service of attending himself without any followers, this distinction is unapplicable to the times we speak of; for, in truth, there was not in the Conqueror's time, nor for some time after, any person who held of the crown by such a service, of which I think the very constitution of the Conqueror's army, and the manner of their settlement here, is an abundant testimony: for, besides the Conqueror himself, all persons in it were either his immediate followers, or the immediate followers of some of the Norman barons or neighbouring princes that assisted him; his, and the followers of the other chiefs were, as has been observed, their tenants, with respect to their several subordinate seigniories they were respectively possessed of, and composed the court barons in them. The chiefs became lords thereof, and held of the great seighiory of the realm by a determined number of military men. Further, it is plain by a law of William the Conqueror's, which is also cited by lord Coke, from a manuscript of archbishop Parker (*i*), and directs the payment of relief by earls and barons to the crown, and that the vavassor shall pay relief to his liege-lord; from whence it follows, 1. That

(*i*) L. Sax. 223. 2 Inst. 8.

these

these were the only military tenants then known.
2. That all who held of the crown were then understood to be barons, because it is certain, that all tenants of the crown paid relief to it.
3. That all these barons had sub-military tenants, for such does the word Vavassor denote.
4. The word baron did comprise the burghers, who held their boroughs immediately of the crown.
To clear this point, it may not be improper to give a delineation of the antient condition of the boroughs, they having been plumed even as much as the barons themselves; for as they were originally so many sovereign princes, so were these as many little commonwealths. But I will be very brief on this subject, because there is hopes of seeing the ancient state of the boroughs explained by the most accomplished writer this age has produced.

The word borough is derived from the German Burg, which signifies no more than a place where many people inhabit; and, it seems, in old authors, was promiscuously applied to all places where there was a contiguity of buildings. In this acceptation of the word, burroughs are aptly divided, by Dr. Brady, into free burroughs, and those that are not free. In law the word burrough has now a more limited sense; for places which have a contiguity of buildings are, by (*k*) Littleton, divided into towns and burroughs, the first, says he, want many privileges the others have, and then mentions some, viz. That a burrough may prescribe for many customs, a town cannot; the present cities were originally called burroughs, and that the burroughs send members to parliament. The description given by Brady of his second kind of burroughs, answers exactly to that we have now given of towns and burroughs. Hereafter, the word shall be used in the legal sense only.

(*k*) Page 109.

All

"for, or the other great lords or their heirs." From these learned authors we see, that these words the doctor takes to be creative of a new right will bear another construction, and that the confirmations were sought on prudential motives only.

In these burroughs the community of burgesses exercised the self-same prerogatives and powers within the burroughs, that the earl or baron did in the earldom or barony, and were lords of the manor or district of land that composed it, they as the earl or baron in the earldom or barony, with the concurrence of the suitors exercised not only a judicial but also a legislative power. Their laws were called, by law, from two old words By and Lagen, which may be aptly rendered burrough laws: nor does it appear, that in the times now treated of, the assent of any but the burgesses was necessary to give them an obligatory force. From this legislative power in burroughs we may discover the reason of the diversity we noted out of lord Coke, concerning a burrough's prescribing for customs which a town cannot; for those customs were originally so many rules of acting prescribed by the legislature of the burroughs, which being disused, are said to bind by prescription, even as many things first established by the legislature of the kingdom are now said to bind by common law, which is agreed to differ from customs only, in the extent of ground where they have the force of law; thus, if it binds through the whole kingdom, it is called Common law, if in a burrough or manor it is called Custom; now towns being parcel of a manor, which is one royalty, cannot prescribe for customs, because the orders made at the manor-court, bind not only the town but the whole manor; for in all cases, by the rules of law, the prescription must be as extensive as the custom: whereas burroughs being a distinct and entire liberty,

berty, may prescribe for customs within the extent of their own territories.

In many burroughs, by their gradual declinsn from riches, these powers have been lost, and even their very remembrance is vanished, but in others we see them yet subsisting, in the city of London rather singular in the having preserved her immunities, than in having any peculiar to itself. So late as Henry IV. time, such was the power of the mayor, that the king's soldiers were refused passage through the city (*), even yet the sword and mace, the two great emblems of authority, are carried before their mayor: how many other franchises do they exert, and how small a part are even those of what they are entitled to?

The very etymology of the word Burgher and Burgess are a plain indication, that the word Baron, in its original signification, might be applied to Burgesses; for, as has been already observed, War and Bar, whence the word baron is derived, were the same word sounded and spelt differently: In England and France, that they both signified Man is agreed; and in the Saxon Burgh War, signified the Men of the Borroughs, whence by corruption was derived our more known words burghers and burgess. Was it not then a very proper version of the Saxon phrase in the dialect of that age, to render it in Latin by Barones in the plural number; for in the burroughs the old Saxon equality being preserved, all the inhabitants were barons alike.

In the Conqueror's time we find many instances of the burgess, in several towns, being called Barons. One writ of his is directed to the Portgreve and Burgess of London, after another to the Mayor and Barons (o); yet it is obvious they must be the same community, in the one denoted by their

(n) Vol. I. of the Collect. of the Hist. of England, 421.
(o) Argument Antinor, 74.

Saxon

Saxon, and the other by a Norman appellation. In another of William the Conqueror's writs (p), the burgesses of Carlisle are so stiled; in Domesday the burgers of London and Warwick are called Barons (q); and this appellation of the word baron continued some time after the Conqueror, for in several charters pleaded by the city of London to the Quo Warranto formerly brought against them, they are so stiled (r).

The inhabitants of the Cinque ports, tho' nobody doubts their being Commoners, were not only antiently stiled Barons, and amerced as such, but even retain that appellation to this day; nor are they the only burgess that have of late used it, for the burgesses of Corfe-castle, in a letter to their then representative (Hobart, who was afterwards chief justice) so stile themselves (s).

If it be asked how this word, originally applicable to all burroughs, became confined to the Cinque ports, I think it may be fairly answered, that the bulk of the people, and infinitely the greatest part of the language, being Saxon, it is no wonder, that the Saxon appellation did prevail elsewhere universally; and the use of the Norman term Baron remaining with respect to the inhabitants of the Cinque ports, may with great probability be imputed to the frequent journies our kings made through these places to their dominions in France, and the great number of Frenchmen we know they settled in them, being places then of much greater importance than now.

That the tenants, by grand serjeanty, were comprised under the name of Barons, is already proved; nor is it, I think, denied by Dr. Brady and his followers: now it is certain, that many burroughs

(p) Argument Antinor. 82. 83. (q) Camb. Brit. 239.
(r) Pleadings in the Q. W. 2, 3. 8, 9.
(s) Willis's Not. Parliam. vol. II. 499.

and

and cities held, and yet do hold, by grand serjeanty; thus the mayor of London is, as such, the king's cup-bearer at the coronation, and the barons of the Cinque ports always suppore the canopy at that solemnity. Therefore it seems that these were as well, in point of rank, entitled to the appellation of barons as any persons whatsoever; for if the importance of a coronation is rightly understood, these services will be found equal in dignity to the most honourable.

It being, I think, undeniably proved, that the word baron did denote all the immediate tenants of the crown, viz. besides the ecclesiastics, the earls, barons, and burgesses, we may without hesitation (all history, antient monuments and authors being agreed, that the parliament did consist of barons) assert, That in the Conqueror's time these three ranks of laymen were members of the legislature. But for the further clearing that the burroughs had and excercised this right, it being so positively denied of late, I would offer to the reader's consideration the following particulars.

1. The burroughs, as has been proved, were vested with this right in the Saxons time; therefore, unless the contrary is proved, it is to be presumed they had the same under William I.

2. It seems to have been the universal notion of all the Gothic nations, and, in particular, of our Saxon ancestors, which is also agreeable to the rules of reason, that freedom consisted in the being subject to no laws, but such to which the person who is bound consents; therefore the burroughs could not be called free, nor the inhabitants of them barons, unless they had some share in the legislature, and consequently a seat in parliament.

3. Parliaments, and a convention of the estates, seem originally to have had one signification, both in this and other kingdoms; and that a convention of the

the state was only a meeting in person or by representation of all the proprietors of land in it. Now, considering all the others were represented, to suppose the burroughs, were not under which name London and all other cities were originally comprised, making so considerable a part of the kingdom, seems unreasonable and improbable.

4. The right of the barons being built on their tenures, and annexed to their land, whence their very possessions were stiled a Barony, a name very lately well known in our law-books in that sense (t), and the district of land that composed any one baron's estate being infinitely inferior in its consequence to the public to many burroughs, for no baron's estate can be supposed equal to the cities of London, York, Exeter, Bristol, &c. the community in these places had the same foundation to claim a share in the legislature that the barons had; and therefore it is to be presumed they had it, unless the contrary can be proved.

5. When the summons to parliament first came in use is hard to define; but it should seem by a clause in king John's Magna Charta, which will be cited at length below, that the difference betwixt a general and particular summons was a thing then well known: if so, a new proof of the burroughs sending members to parliament may be thence collected; for they being all equally barons, and the body politic of the burrough tenants in chief of the crown, the summons could not be to any particular person, as in case of feudal baronies, but must be to the body politic, who being in that capacity unable to act, the authority necessarily devolved on some of the community, who became vested with it by delegation from the collective body of the city or burrough.

(t) T. Jones's Reports, p. 164.

If

If we compare the hypothesis here offered of the legislature in the Conqueror's time, with what has been said concerning it in the Saxon, we shall see a visible coherence, nay almost uniformity betwixt them, which, however, has been little or not at all observed; for the ecclesiastics in the Saxons Witena Gemot and Norman parliaments were the same, so were the earls; the only diversity that can possibly be found is in those whom the Saxons call Wites, and them we have here proved to be stiled barons and burghers; and yet that will on due consideration appear inconsiderable; for, as has been proved, the Wites were the superiors of the Saxon tythings, and as such, had their seat in the Witena Gemot. We have observed also, that these tythings were called Burroughs; that they were of two kinds, rural and town tythings, and that the hereditary superiority of the rural ones was conferred, on the conquest, on some Norman, some English; which tythings being generally given to the former, received the denomination of honours and baronies: and as the superiors in the Saxon time were, by their being so, members of their legislature; so these by the like reason were members of the Norman parliament; with this only difference, that as these were possessed of their superiority by election, and for a time only; so was their right to sit in the legislature only temporary: whereas, these being the hereditary superiors, had this amongst other rights of superiority in succession: and as the Saxon Wites served for their tythings, so were the barons by law intended to serve in parliament for the tenants of their baronies (*u*), which we are told by good authority (*v*), is the reason why their tenants were exempt from

(*u*) Moor's Reports, 768.

(*v*) Crompton Jurisdic. 17, 11 H. 4. 2. 4. 12 R. 2. c. 12. 28 E. 3. 23. 2 Inst. 26.

contributing to the wages of knights of the shire; the trading tythings remained members of the legislature as before, and consisting chiefly of English, retained their Saxon name of Burrough, a share in the legislature by election, under another denomination, that of Wite being lost, probably because it was not conferred always on the magistrates, and that of burgess becoming in use: thus was every spot of ground still represented; for, as in the Saxon time, every part was within some tything, so in the Norman, every part of the whole kingdom was within the compass of same barony, or some burrough.

If we look into the times after the conquest, we shall see the hypothesis here proposed, as exactly tally with them as with the former. Amongst many remarkable instances that might be given, I will in this place only mention four.

1st, This hypothesis agrees with the universally received opinion of our most judicious writers, who all allow, that the citizens and burgesses sat in parliament long before any knights of the shire were chosen; and that both Houses originally sat together (*w*).

2dly, We see here a good reason why the parliaments were the supreme courts of judicature, and why writs of error did, and still do lie to parliament; and though the House of Peers are now the sole judges, yet is the error supposed to be redressed in parliament; for the parliament consisted of earls who presided in the county court, barons who did the like in the court-baron, and the representatives of the burroughs where the community judged; what then would be more natural, than for the errors of one judge to be redressed by an assembly of the chief judges in every district of ground?

3dly, This hypothesis well explains not only the

(*w*) Atkins's Rights of the Com. 24, 26 and 35.

origin

origin of the Privy Council, and courts of King's Bench and Exchequer, but alſo their preſent conſtitution; for politics, a heavenly ſcience, when confined to it's only true end to make the whole happy, deviating from it, and the number of controverſies originally cognizable only in parliament encreaſing, the ſhort time they ſat occaſioned, as I conceive, the appoining at firſt one Committee of parliament, both to adviſe the crown in matters of ſtate, and judge of controverſies, when the parliament did not ſit; the multiplicity of buſineſs after occaſioned the appointing of three, one for ſtate affairs, the other for criminal matters, the third to regulate the receipts, perhaps the diſburſments of the public money: from the firſt of theſe came the Privy Council; hence the office of a Privy Counſellor is for the joint lives of the king and counſellor (x), for, being originally appointed by parliament, no authority but parliamentary can diſplace him; and as the king's death diſſolved the parliament, conſequently, it determined the Privy Counſellor's office: hence the method now in uſe of excluding a Privy Counſellor is not by ſtriking his name out of the roll, but by omitting to ſummon him. From the other two were derived the courts of King's Bench and Exchequer. This origin of thoſe courts diſcloſes the ground of their judging cauſes betwixt the king and ſubject, which the Common Pleas, erected by king John's Magna Charta, does not.

And we may alſo hence collect, that the making the office of a judge for life, at leaſt in the two original courts, is only reſtoring the antient conſtitution: why the judges yet ſit in parliament, and once were of more conſequence than they are now, and that conſiſtently with Magna Charta, they amerced peers.

(x) 4 Inſtit. 54.

4thly, This hypothesis shews the reason of writs of error lying from the Common Pleas to the King's Bench, and not to the Parliament, and why those from this court are returnable in parliament, and not before the king, before whom in reason they ought to be, if the judges originally derived their power from the king only.

The proofs of our hypothesis that have been already produced are drawn from our own writers, or from the present constitution; many more might be collected from the history of other countries, where our German ancestors settled themselves: for, as has been already on another occasion remarked, these nations having lived at home under the same form of government, established it in all their conquests; but that would be too extensive an enquiry, nor indeed have I all the books before me that are necessary to do it, with the exactness which ought to be aimed at in every thing that is offered to the public. I will therefore confine myself, to shew the parity betwixt the scheme of government that is here delineated, and that in Scotland and Germany: I chuse these countries rather than any other, because betwixt the laws of Scotland and England there was antiently so great a uniformity, that it is questioned, whether the oldest system of law in each country are one and the same, or different books; the reason for chusing Germany for the other country, where we may expect a constitution like our own is, because our Saxon ancestors came from thence, and that the bulk of the people and language are derived from them.

In Scotland we find plainly, that all the immediate tenants of the crown are called Barons, not only in their law-books, but also in many acts of parliament, which is sufficient to evince the use of the word there, and seems a strong evidence of its original

original notation here. We need not spend any time neither, I think, to shew, that every Baron was originally a petty prince; their history abundantly shews the power of the superior over his vassals, and we have lately seen how much that power yet subsists. In Scotland also till the year 1425, we may infer, that all the barons came to parliament, because an act passed that year, in which it is recited, that all the immediate tenants of the crown were obliged to attend.

That the burghs in Scotland, where the term undoubtedly is only applied to those who hold of the crown, had within themselves a legislative power, and were so many little commonwealths, is evident by their laws that are in print: and though I make no doubt, but in the earliest times they sent members to parliament; yet there not being such direct evidence of it, at least that has yet fallen under my observation, I must leave this on the probability of the thing; but that their parliament was only the king's Court-baron, and their courts of judicature and privy council, originally only committees of parliament, we are assured by one of the ablest men that ever adorned this isle (y).

The government in Germany, even at this day, is conformable to what we have supposed ours was; the emperor is equal to what our king was, the princes to our peers, the free cities to our burroughs, their diet and our parliament differ only in name.

On the solid foundation we have here represented was the government built when William the Conqueror died; his younger sons William and Henry successively came to the crown, and, for ought appears, changed nothing in the legislature; the latter of these dying, left the kingdom to the

(y) Mackenzy's Institutes of the Laws of Scotland, 18 and 23. Craig. de Feudis, 36, &c.

rapacious seizure of Stephen, earl of Blois, who had no colour of title; for he ascended the throne to it, tho' not called by the free consent of the people, nor claiming it by proximity of blood: as he obtained it unjustly, so his reign was one continued series of violence, and little artifices, for the preserving his ill-got possession, of the last two affected the constitution of the legislature in its most considerable ranks, I mean, in the earls and military barons; of which in order.

It is related of this prince, that he made earls without counties; but whether these were originally made without having any county appropriated to them, or whether they had counties at the time of their creation given that were vested in others, whom this king considered as forfeited, for siding with his enemies in the civil wars; and after the pacification, on the pardons that were granted, the former were continued, or re-instated in their possessions; and so these new created earls retained nothing but the title of Earl, is a question I must leave to be decided by others; for I have not yet found sufficient reasons to ground any opinion on.

The barons, as we have seen, were feudal, and so many little princes, they being divided in the civil war betwixt Stephen, Maud, and Henry II. each party treated those of the other side as rebels; and in consequence thereof, forfeited such of their adversaries as they could: this brought the immediate possession of much land to the contending princes, who with it remunerated their respective friends. The power of the Barons over their own vassals each side had sufficiently experimented in the war, which seems to be the reasons why the fees of the new feoffments made by these princes were of lesser districts, so many being to be rewarded; and also, because thereby more were drawn

drawn to an immediate dependance on themselves, and not on any of the Barons: hence the baronies, as they escheated, were split into smaller tenancies in chief, who all held immediately of the crown. As the number of the new feoffees was great, hence arose the distinction of fees into fees of the old feoffments, and fees of the new feoffment, which is computed from Henry I's death; and as all antiquaries agree, the fees of these several feoffments differed in nothing but their extent (z): to me it seems, that this also gave rise to the well known difference of greater and lesser Barons.

Henry II. succeeding to Stephen, un-earl'd all the Earls that had no counties; but whether he did this to restore the antient constitution, or out of any dislike to the persons who were vested with this title, is not clear: however, both his mother and he seem to have regarded it; for in their creation of Geoffrey de Magnavilla, the patent conveys the third part of the profits of the county, as Earls usually had (a): with relation to the Barons, this prince pursued king Stephen's policy in granting small fees; of which the feoffment of Berkley Castle to the ancestors of the present noble earl of that name, is a memorable instance; the service originally reserved by this king being only five Knights, as appears by an inquisition taken in Edward III's time. The state of the law of those times affords also another evidence of the multiplication of tenants in capite in king Stephen and king Henry II's reign; for by the then law, as well as after by Magna Charta, all were to be judged by their peers; that is, those who were their convassals in the same court: now these tenants in capite, in consequence thereof, could

(z) Madox's History of the Exchequer, p. 402, &c.
(a) Spelm. Codex leg. 319. Cambden's Britan. 237.

only be judged in parliament: which in those days sitting but a little time, could not decide all controversies that happened amongst them: hence arose the institution of Justices itinerant, which deserves the more to be remarked, because 'tis the first or second instance that we find in this kingdom of the legislative and judicial powers being severed, and 'twas then thought a grievance (*b*).

Richard I's reign yields no notes of any change in the persons of the legislators, but his brother king John's, as his circumstances bore some resemblance to that great innovator Stephen, so he seems to have set him for a pattern, inventing a new method of making Earls; for instead of giving them the third part of the profits of the county, he reserved the bulk to himself, and gave his earls only a small pension in lieu thereof (*c*): this method seems to have hurried the county court, before declining to the circumstances we now see it in, and thereby occasioned the erecting of the court of Common-Pleas, first established in this king's reign; for the earls, whilst they were to receive one third of the profits of the county, which chiefly in those days arose from the multitude of suits determined in that court, were obliged, by the prevailing tye of interest, to look into the proceedings, support the dignity of the court, and on all occasions to assert its jurisdiction; whereas, being no ways, after this new contrivance, concerned to increase or preserve its revenues; they seem to have left the suitors to apply for justice, in cases cognizable before them, to the superior courts; which, for reasons we need not here insist on, they often found most eligible. Thus the earls neglecting power, because not attended with profit, they lost all influence in their

(*b*) Brady's Hist. 404 and 442. (*c*) Camb. Brit. 237, &c.

counties,

counties, and made room for the lord lieutenants, who, though now they are thought to supply the king's place, yet seem originally only to have been the earls substitutes, and were first appointed in Edward II's time (*d*).

The method introduced by king John occasioned a difference betwixt the manner of creating dukes and earls, in this and the other European monarchies; for the revenues of the dukedoms and counties being thus severed, the titles were, as before, given away; whereas, in other countries, no means being used for that purpose, the sovereigns, when they had a mind to confer honours, parted not with the old great dukedom, or counties, but erected the lands of the person that was to be dignified with a new title, into a dukedom or county.

The antient manner of creating earls, after they ceased to be elective, has not been yet enquired into, because in the foregoing time there are no monuments remaining on which probable conjectures may be founded: but it seems pretty clear, that in this period of time they were created by patent, yet there is some doubt, whether these patents were mere acts of royal grace and power, or whether they were really acts of the legislature, and the patents themselves really acts of parliament. That the reader may judge for himself, for I do not presume to give any opinion in this case, I shall state all the reasons I can find for their being made by parliament, with the objections to this opinion, and such solutions of them as have occurred to me.

Feudal Earls (all were so in the time we speak of) could be made only by the assent of parliament; because,

1. By the feudal law, to which (our law being

(*d*) Tyrrell's 3d Volume, p. 408.

built

built on it) we ought in dubious cases to resort, no peer could be made without the consent of the other peers (e).

2. The Directum Dominium of the land that composed an earldom, being in the collective body of the kingdom, the king (who was not then, nor 'till Edward the IVth's time, reckoned a distinct estate, but only the head of the whole) (f) could not transfer the property without the concurrence of the rest of the body: but as a body politick cannot act itself where any particular act is to be done, the execution thereof naturally devolves on the superior, whether king or lord, though it receives its sanction from the assent of the body politick; so were the necessary acts to the passing the earldom performed by the king: thus, if the city of London were at this day to make a feoffment of some part of their land, and no person were by the corporation anthorised to deliver seizin thereof, it would naturally devolve to the mayor; yet surely the community would be allowed to be the feoffors. All feoffments were originally made by words only, without any writing; the superior, whether king or lord, speaking the words that conveyed the land before, and by the assent of the convassals, or peers of the same court or community, at first, as I suppose, without any ceremony whilst they continued annual; afterwards, probably for the better evidence of the act, the possession being a proof of property, and the execution of every contract consisting in the delivery of the thing contracted for; and land being uncapable of a manual tradition, various symbols were used to represent such delivery. When fees were annual, the remembrance of the investiture of a feud might be well preserved without writing, and consequently,

(e) Hottoman's Franco-Gallia, c. 14, &c.
(f) Tyrrell's Ap. to the Second Volume, p. 4.

the

the title clear; but when they became estates for life, or hereditary, the case being far otherwise, some memorials of the enfeudation were made, which were only mere narratives of the fact; therefore in them the superior is named always as a Feoffor, because he executed the acts necessary for the transferring the possession, and in the third person; and they mention the feoffment in the preterperfect tense, which testifies only a past contract, and makes no present one. The feudal peers there present are named as witnesses, though at the same time they assented, and their concurrence was necessary: hence their names were expressed under the clause of Hiis Testibus. Afterwards (perhaps from the frequency of disputes that happened concerning the exactness and truth of these memorials) they began to draw them sometimes in the first person, and being yet made only for evidence, remained in the same tense; but being signed by the feoffor himself, a prudent caution when seigniories became hereditary, the other clause, In cujus rei testimonium, &c. was inserted; these were here called Charters, but abroad, Breve Testatum (*g*). In France, 'till the thirteenth century, the feudal tenants were comprised under this clause, after only the five great officers of the crown's names were inserted (*h*); and that was deemed so very necessary to make their charters effectual, that if any one's name was omitted, then was the reason thereof expressed in the charter (*i*); so in all the acts of moment of the old Earls of Holland, we find the authority and subscriptions of the Barons to them (*k*): the like also was practised in Scotland (*l*);

(*g*) Craig, 137. Corvi. 109.

(*h*) 8 Coke's Princes Case. Hale's History of the Law, p. 8.

(*i*) Mabillon de re diplomatica, 157. Mezeray in the Reign of Philip. Madox's History of the Exchequer, p. 19.

(*k*) Grotius de R. Bat. 78.

(*l*) Dalrymple's Collection concerning the Scotch History, p. 229. Et passim in Apendice.

and

and in England the like forms prevailed, for the laws were originally first assented to by our kings in parliament; as acts of grace now are sent down from the crown: this is plain from what Bracton writes (m), "Legis vigorem habet quicquid de "consilio & consensu magnatum & reipublicæ "communi sponsione authoritate regis sive prin-"cipis præcedente justè fuerit definitum & ap-"probatum;" and also by our famous Magna Charta, which, though it runs in the king's name, yet has the assent and approbation of the peers testified, by the insertion of their names under the clause of Hiis Testibus. This form of making acts, after the defeat of the earl of Leicester, prerogative running exceeding high, and liberty languishing, received an innovation; and as the subjects were then first forced to petition the king for justice, so the like manner of applying for laws was introduced; the petition and answer containing the sense of the king and parliament; from them was extracted the acts, perhaps by some Committee appointed for that purpose by parliament, and as it seems sealed, as they used to be before this change, with the Great Seal (n); and this method continued till the latter end of Henry the VIth's time; then they were drawn up in the first instance in the form we now see them (o): the clause of Hiis Testibus, however, continued in all charters and writs 'till Richard the Ist's, or king John's reign, then the Teste meipso was introduced, at first, and for some time, only in writs, or mandatory precepts, after in more important cases; which kind of Teste, since Henry VIIIth's time, has prevailed in all cases (p), the patents for peerages only excepted (q), as I suppose at most as-

(m) Lib. 1. c. 1.
(n) Tyrrell's History, p. 452. (o) Hale's History, p. 14.
(p) Madox's Differtat. to the Formulare, 32.
(q) 1 Instit. 7. a. 2 Instit. 78.

suredly

surely about the time the clause of Hiis Testibus was left out, and that of Teste meipso was introduced; both here and in Scotland (r), the style in the beginning of charters was changed: for, as before the proposal seemed to come from the king, and the assent of the peers was testified, by the subsignation of their names; so after leaving out the attestation of their consent, the king gave over using the singular number, and then comes in the use of the plural, Nos, (s) &c. The learned reader will judge, whether the character of king John, and the times considered, this was not an evasive device, of the same nature with that of his making Earls, to have those precepts and commands of his obeyed, which issued by his own sole will, which, without the concurrence of the peers, were not obligatory, and to which they would not concur. The like forms were also observed in the feoffments made by the peers, the assent of their feudal tenants being also comprised under the clause of Hiis Testibus; and sometimes also under this clause the consent of the persons, without whose concurrence the deed was not valid: these forms continued 'till the alteration of the forms of our acts of parliament, when they were reduced to that of a tripartite indenture; and all the ranks of persons whose assent was necessary, were made parties to the acts: so were all persons interested; instead of their assents being testified under the clause of Hiis Testibus, they were, as at this day, made parties to the deed itself. As to the number of names that were inserted under this clause, by the best observation I can make, I incline to suppose, at first all were inserted; nor will this seem strange, if it be considered, that the feudal peers were not originally many; afterwards, on their

(r) Dalrymple's Collection of the Scotch History, p. 187.
(s) 2 Institute, p. 2. Nicholson, Hist. Lib. 179.

increase,

increase, probably the majority; and on their yet becoming more numerous, (suppose) in king Stephen's time, though the charter received its sanction from the assent of all, only some (*t*), as it seems, in the behalf of the rest (*u*), and no determined number, but ever of the greatest men in the kingdom (*v*); perhaps the names of those who were appointed to put it into form.

If these observations are allowed to prove, that the mention of these persons names under the clause of Hiis Testibus imported their assent; then 'tis clear, that originally all Earls were made *by* the assent of the parliament; and they yet retain in their patents an evidence of their being so created still.

4. Many patents for peerages were passed in parliament, and undoubtedly were acts of parliament; many creations made out of parliament were confirmed in the subsequent, for which there seems to have been no ground, if the king alone had a right to confer the title (*w*).

5. The Barons have claimed, and according to the opinion of several learned antiquaries, justly too, that all offices ought to have been filled up in the times we treat of, by consent of parliament; and during the period of time we are speaking of, earldoms were officiary, and consequently within the Barons claim.

6. It seems clear by the law, at least, as 'twas understood in the times now treated of, that all Earls had counties appropriated to them, (though they did often write themselves Earls of some of

(*t*) Selden's Titles of Honour, 580.
(*u*) Petyt's Rights of the Commons, 37.
(*v*) Mad. Differt. to the Formulare, p. 32.
(*w*) Selden's Titles of Honour, 624. 8 Coke's Princes Case. W. Jones, 104. Pryn's Plea for the House of Peers, p. 6. Tyrrell's Introduction to the Third Vol. p. 6. and in the Third Vol. p. 661, 886.

their

their castles) (x) and that no power but that of king and parliament could make a county, or consolidate two into one, seems to have been the opinion of latter ages also; for Henry VIII. by the authority of parliament, divided Wales into shires; and Hexamshire was after, by act of parliament, consolidated with Northumberland: it may therefore be inferred, that, suppose the king could grant a county that escheated, and thereby make an earl; yet that he could not originally increase their number: nor do I recollect any instance of an earl's being made without the title of a county, 'till king James I's reign: since indeed dukes and earls becoming more numerous, many have assumed other titles; and some have even taken titles from lands that are not immediately held of the crown, which 'twill be very difficult to reconcile to law or reason.

Against the parliamentary creation of peers, besides the present practice, there arises an objection from a record, the knowledge of which I owe to a very learned friend: as 'tis not possible to judge of the weight this objection ought to be allowed, but by a perusal of the whole record, I shall here insert it at large.

"OUR soverain lord, like it your noble grace
"to be remembred howe I John Erle
"Marescall have sued in diverses your parlementz,
"in tyme of your gracious regne, desiryng to
"have declaracion made for my place in yis your
"hie court of parlement aboue my cousyn of
"Warwyk, as I and all my aunceſtres and prede-
"cessours have had at all tymes, of which no
"mynde ys ye contrary, tas erles of Northfolk,
"as well for he blode riall, and armes rially, yat
"I am come fro, and here, as for the said erle-

(x) Vincent against Brook, p. 11.

"dome,

" done, as by diverses evidences, wrytinges, and
" records in yis your present parlement declared,
" fully in my conseit ys proved, which proves
" notwithstandyng, yat hie and myghti prince my
" lord of Gloue, your bealuncle, and your oyer
" lords, by your hie auctoritie in your parlement
" assembled for diverses causes hem moevyng,
" will not take upon hem declaracion for my saide
" place, whereupon the comunalte of your realme
" at ys tyme by your commaundement called to
" ys your riall court of parlement, seying yis de-
" lay of which were like to growe unease and un-
" frendly love betwene me and my said cousyn of
" Warwyk, hau in all humble wise, insaunced
" your innocent and benygne soveraine lordship,
" consyderyng howe yei here sey by common lan-
" gage, yat I shuld be born to be duc of Norffolk,
" which if so, were your comunaltie supposeth
" shold make finall conclusion of ye determination
" of my sayd place above my said cousyn of War-
" wyk, at the reverence of which comunalte, as
" wel as for ye desire yat I love to have peas, rest
" and tranquillite with my seyde cousyn of Warr.
" And in especial, desiring to save ye right and
" inheritance of me and my heires, yat God of
" his grace hath suffered me to be borne unto,
" cleyme to be duc of Norffolke, declaring to
" your noble grace, to yat hie and myghti prince
" your bealuncle, my lord of Gloue. and to all
" ye oyer lords in your present parlement assem-
" bled, howe yat yt liked to king Richard ye se-
" conde, after ye conquest, your worthi predeces-
" sour, for diverses notables causes him moevyng
" in his parlement holden at Westm. the xxix. day
" of Septembre, ye year of his regne xxi, by his
" letters patentes to cree Thomas that tyme erell
" of Notyngham, and marescall of Ingeland, into
" duc of Norffolk, with the stile, title, name and
" worship

"worship to ye same duche appendant, to have
"ye said stile, title, name and worship to ye said
"duc, and to his heires males of his body com-
"yng for evermore. And over yat ye said king,
"king Richard yat same tyme, by his said letters
"patents granted to the said duc, and to his
"heires males of his bodie comyng for the better
"sustentacion of the said stile, title, name and
"worship, xi marcs yerlie, to be take in his Ex-
"chequer, at ye festes of Pasque and Seint Mi-
"chell. Which Thomas duc had issue Thomas
"and mee; and of his stile, title, name, wor-
"ship, and annuel rent of xi marc, the said Tho-
"mas duc dyed seized in tyme of the said king
"Richard; after whose decesse, the said stile,
"title, name, worship, and annuel rent of xi
"marc, descended to the said Thomas the sonne,
"as sonne and hier, which Thomas the sonne
"dyed yereof seised within age, and withoute
"issue of his body comyng, after whose decesse,
"the said stile, title, name, worship, and annuel
"rent of xi marc descended to me, as broyer and
"heir, be force of the said creacion and graunt.
"And so I clayme to be duc of Norfolke, and to
"have the stile, title, worship, and annuel rent
"of xi marc aforesaid: and yat I may by you
"our soverain lord, my saide worthy lord your
"bealuncle, and all your oyer lords, be so re-
"puted, holde and declared, in yis your rial
"court, and to have and enjoie my place yerto
"accordant: savying alweis, ye title, right, and
"possession of mee, and myn heires of myn body
"comyng, as erels of Norfolk, to my place in
"this hie court, above my saide cousyn of Warr,
"and his heires, bycause ye name of duc of Nor-
"folk is tailed to me, and to my heires males of
"my body comyng. And the name of Erel of
"Norfolk is tailed to me, and to my heires of

"my body coming generally. Beseching meekely
"unto your hie and noble grace, yat yis my sup-
"plicacion, and all over matteres into yis your
"saide parlement, by mee and myn counsel no-
"tified, ministred and declared, in proof of my
"place for to be had, as erell of Norff. above my
"said cousyn of War. may be in yis your parle-
"ment enared, and of recorde enacte."

QUA quidem petitione in parliamento predicto lecta, plenius & intellecta ac habita, inde cum justiciariis, & servientibus domini regis ad legem, ac aliis peritis de consilio ipsius domini regis matura & diligenti deliberatione: consideratoq. quod licet prefatus nuper rex Richardus, in dicto parliamento suo Thomam, nuper comitem Notinghamiæ, in ducem Norff. in forma predicta creaverit: ac idem parliamentum cum suis circumstanciis & dependenciis quibuscumque postmodum in parliamento domini Hen. nuper regis Angliæ, aut domini regis nunc, apud Westm. in festo Sanctæ Fidis Virginis, anno domini regni sui primo, tento, generaliter revocatum extiterit, & penitus adnullatum, pro eo tamen quod hujusmodi creatio ducum sive comitum, aut aliarum dignitatum ad solum regem pertinet, & non ad parliamentum, prefatusque nuper dux diu ante dictum festum Sancte Fidis, diem suum clausit extremum, prout per diversas inquisitiones post mortem ejusdem nuper ducis, virtute quorundam brevium ipsius nuper regis Henrici captas, & in cancellaria sua retornatas, ac in presenti parliamento de advisamento dominorum spiritualium & temporalium predictorum, exhibitas & ostentas, plenius poterit apparere, sicque revocatio dicti parliamenti ipsius nuper regis R. prefatum nuper ducem aut heredes suos absque speciali mentione de eis facta in eadem, nullatenus ledere potuit: ac etiam pro eo quod

inspecto

inspecto totulo ejusdem parliamenti prefati nuper regis Henrici, nulla fit mentio in eodem, de aliqua speciali revocatione sine adnullatione stili, titili, nominis vel honoris ipsius nuper ducis, vel dictorum heredum suorum.

Necnon pro eo quod quamplures alii, quorum quidam in comites, quidam in alios status sive dignitates per prefatum nuper regem Richardum in dicto parliamento suo, modo consimili, creati fuerunt, suis stilis, titulis, nominibus, & honoribus extunc continue usi sunt & gavisi, ac eis in presenti gaudent & utuntur, dicta generali revocatione & adnullatione parliamenti ipsius nuper regis H. ut premittitur facta, non obstante: aliis quoque quampluribus notabilibus de causis tunc ibidem diligenter attentis, tandem per dominum nostrum regem, de avisamento & assensu dominorum spiritualium & temporalium predictorum, ac communitatis regni Anglie in dicto presenti parliamento existentium, necnon justiciariorum, & servientum domini regis ad legem, & aliorum peritorum de consilio ejusdem domini regis predictorum, declaratum fuit & unanimiter concordatum, quod prefatus Johannes comes Marescallus, & filius predicti Thome ducis, & frater, & heres predicti Thome filii Thome, virtute carte, & successionis predictorum de cetero dux Norff. reputetur & teneatur, ac stilo, titulo, nomine, & honore ducis Norff gaudeat & utatur juxta tenorem carte supradicte. Quam quidem declarationem & concordiam, prefatus dominus cancellarius auctoritate regia postmodum, viz. xliii die Julii, ultimo die hujus parliamenti, de avisamento dominorum spiritualium & temporalium predictorum in pleno parliamento predicto, in presentia domini nostri regis, publice declaravit. Super quo prefatus Johannes, ut dux Norff. homagium ligeum eidem domino nostro regi tunc ibidem immediate fecit,

(quo facto) idem dominus noster rex de avisamento & assensu predictis, ipsum ducem inter pares parliamenti predicti in loco competenti sedere demandavit; quod idem dux gratanter fecit tunc ibidem.

Here seems indeed an express testimony for the prerogative, but many observations must be made before its weight can be judged of.

1. The material passage is only in the recital, therefore it cannot be creative of a new right, but at most, declaratory of an antient one.

2. Such a recital is not of the same authority as the recital in our acts of parliament since Henry VIth's reign; for, as was remarked on another occasion, the acts were not then drawn into form on the first instance, but that this was first begun in the latter end of this very king's reign: so that it seems some acts not warranted by the petition or answer had been then made, and the flagrancy of such very soon after introduced the method now in practice: hence we may well question, suppose this were an act of parliament, for it seems only a judgment given in that high court, whether these reasons were the sense of the legislature, or only the flourishes of them who drew up this record, and the more so, because nothing in the petition warrants it.

3. This record seems also to carry a strong evidence of the parliamentary creation of peers, because 'tis evident, that on this supposition the duke had not then the possession of the title or rights appertaining to that rank.

4. If the power of the king had been clear, what occasion was there to mention any other reason, for the judgment given in favour of the claimant.

5. The conferring earldoms might, at the time we speak of, be vested in the legislature, and the right

right might, by subsequent usage, be gained before, or in Henry VIth's time, as it now is by the crown.

Some persons have imagined, that these tenants of the dissolved baronies, who were distinguished by the name of the Less Barons, did not enjoy any share in the legislature, nor the other rights of Barons; but this is an error: for there is proof enough, that in all this space of time, the notion of a Baron continued annexed to a tenancy in chief of the crown; and that these lesser Barons enjoyed the same priviseges the greater did. Henry IId's time affords two pregnant proofs of this; for, by the assize of Clarendon, 'tis clear all the ecclesiastic tenants in chief were Barons; and by parity of reason, the like may be concluded of the lay, on the feoffment he made of Berkley castle, (which has been before remembered) he reserved only the service of five knights. Two of these, by what means I know not, were extinguished; and yet, by an inquisition taken in Edward IIId's time, 'tis found the castle was held by barony, by the service of three (*y*). The same notion continued in Edward IId's time, for the abbot of Leicester being summoned to parliament, excused himself, because his abbey was founded by Mountford earl of Leicester, and in consequence thereof, was not held in chief of the crown (*z*). In Edward IIId's time, by inquisition, it appears, the castle of Abergavenny, which even at this day is held by barony, was found to be held in chief by a military service (*a*).

This increase of tenants in chief had produced a very unequal representation of the kingdom, these lesser Barons having an equal share in the

(*y*) Atwood, 188.
(*z*) Prynn's Plea for the House of Peers, 151.
(*a*) Treatise of the Barony of Abergavenny, 65.

legislature with the most potent; and this grievance being now probably grown to the greatest height, when king John was reduced to season, this clause was inserted in his Magna Charta.

Preterea volumus & concedimus, quod omnes alie civitas, & burgi, & ville, & barones de quinque portubus, & omnes portus habeant omnes libertates, & omnes liberas consuetudines suas, & ad habendum communa consilium regni de auxiliis assidendis (aliter quam in tribus casibus predictis.) Et de scutagiis assidendis summoneri facimus archiepiscopos, episcopos, abbates, comites, & majores barones regni sigillatim, per literas nostras. Et preterea faciemus summoneri in generali per vice-comites & ballivos nostros, omnes illos qui in capite de nobis tenent ad certum diem sc. ad terminum 40 dierum ad minus, & ad certum locum & tempus, in omnibus literis illius summonitionis, causam summonitionis illius exponemus: et sic facta summonitione, negotium ad diem assignatum procedat, secundum consilium eorum qui presentes fuerint, quamvis non omnes submoniti venerint.

In this paragraph many things deserve consideration. 1. It occasioned a new distinction of Barons; for, as the splitting baronies gave rise to the difference of the old and new feoffment, and that of greater and less, so did this to that of parliamentary and unparliamentary Barons; and as the word was formerly, per eminentiam, applied to the chief man of the place; so did it likewise in time become appropriated to the chief man of those places who sate in parliament; hence the addition of Baron became considered as an honour; and as before, the title of the person's office, Bishop, Earl, &c. was inserted in deeds, so now began what was more common in king Henry IIId's reign, for the Barons to write themselves Barons

of

of their chief castle (b): and as a great antiquary observes, then the lesser Barons were stiled Military Tenants; whereas before, all Tenants in Capite were, in our histories and records, denoted by the common name of Barons *, and their military tenants, as it seems by the certificates of the Barons (c) in Henry II's time, Tenants by Knights Service. 2. It appears, that the great Barons were to be severally summoned, so they are at this day; but this clause does not declare who were great Barons. All the light I can find to determine this by is, 1. From the inquisition, concerning the tenure of the castle of Berkley, already cited on another account; by it is plain, that at most five, perhaps three knights fees at this time constituted a Baron. 2. If more than one knight's fee, that was held in chief, did not entitle the tenant to the appellation of a greater Baron, than the immediate tenants to the crown not sitting, but only (as will be cleared in the sequel) by representation, it will follow, that there was then two degrees of representations, which is without example, contrary to reason and a known maxim in law, that an authority, unless coupled with an interest is not transferrable; so that it should seem, that those were the greater who had any sub-tenants, those the less who had none. The learned reader may, but I do not pretend to decide the justness of this conjecture.

Tho' by virtue of this clause that limits the particular summons to the greater, the lesser Barons were excluded from sitting in parliament singly, and in person; yet as it directs, that they shall be summoned in general (a term, if the hypothesis that has been offered concerning the burroughs is true, then well understood) it gave them a right to do this, as a community in general, and by repre-

(b) Spelm. Rem. 245. * Selden's Titles of Honour, 589.
(c) Madox's History of the Exchequer, 400.

stitution; which was most just, for otherwise, tho before, every individual had a right vested in himself, all of them would have been excluded, when all the land-holders had a share in the legislature from any; and this too contrary to the universal practice of the antient times; whereas, the admitting persons as their representatives was in some measure restoring the antient constitution, because as the land these tenants held, when united in one seigniory, entitled the possessor, amongst other rights, to that of a voice in parliament: so was it reasonable, that some in behalf of these *lesser Barons* should be authorised for the exercise of this right, which, as a collective body, they could not otherwise exercise. As all these lesser Barons were co-ordinate in rank, this naturally devolved on such of their body as the rest conferred it on; the persons so chosen were from the tenure of their lands called Knights (such is the law phrase borrowed from the old Saxon, that signifies tenants by military service) and representing the whole community of the respective shires for which they served, had that addition also.

The general summons for the lesser Barons is by this clause directed to be in forty days; and that term has still continued to be the space betwixt the teste and the return of the writ; within that number of days there is ever a county court held, to which none but the immediate tenants of the crown (the lesser Barons) came, there was the election made, and none other had votes 'till, by the 8th of Henry VI. chap. 7. all freeholders of 40s. per annum had that right given them, which is the only act they who are tenants to any private person exercise in that place; for some time the number did not seem to be well settled, but it was not long e're they were fixed to the number that are now chosen. Whether they had originally any

wages is not clear, for a very diligent searcher of our records, could find no writs for levying them elder than (d) Edward I. Besides these observations that arise from the act itself, the writ for the election of knights of the shire, suggests one that ought not to be omitted: in it we find these words, Duos Milites Gladiis Cinctos; which, tho' now considered as of no import, did, however, in antient times, contain a description of the persons that were capable of being elected; for our German ancestors had a custom in their own country (as is noted above) of bringing the youth into their public meetings, and there, by a ceremony suited to the simplicity of that age, admitting them into the number of military persons. This they carried with them into their conquests. Long it continued in use here and elsewhere: our histories are full of instances of it, as may be seen in Selden's Titles of Honours, and several usages now common amongst us are thence derived. When knights fees became hereditary, the persons who had passed this ceremony were called Milites Gladio Cincti; those who held by military service, but had not, were stiled simply (e) Milites: hence we see, that none but those were capable of being chose; but this limitation is now taken off per 23 Henry VI. chap. 25.

As the civil wars in England did introduce a departure from the antient constitution, by the increase of the tenants in chief, so the like causes, tho' not so soon, seem to have produced the like effect in other countries; for in Scotland, in the year 1425, an act passed to oblige all the Barons to attend in person, and not by proxy, without a lawful impediment. This act making the parliament, it seems, numerous, the same year one

(d) Prynn on the fourth Institute, p. 2 and 3.
(e) Cambden's Britan. 246.

passed

passed so enough the small Barons, provided two came commissioned from the rest: by a subsequent act 32 years after, the denomination of small Barons is determined to all under 20l. per annum; but even these were obliged to attend, if specially summoned, and forty-six years after, the exemption given to those of 20l. per annum, is extended to all under an hundred marks, with the like clause for the attendance of these, if particularly summoned. In Scotland also, these commissioners had, by act, passed in the year 1427, their charges allowed them; and thereby it is directed, that those charges shall be levied on the persons, who were by their appearance excused coming: and in the year 1682, an act passed, declaring the right of election, to reside only in the immediate tenants of the crown, which is still in force throughout that part of this Isle, two counties, I think, only excepted.

In France also, the number of immediate tenants of the crown increasing, as it may be conjectured from the self-same occasion that it did here; the dignity of peers became annexed to twelve of the principal feifs that held of the crown, and in other large baronies in that kingdom the like was also practised (*f*).

As the Barons success against king John, in some measure restored the antient constitution; so did Henry III's victory over the great and good Earl of Leicester introduce a most enormous deviation from it, or at least gave him a colour for doing so; for it is said, that he obtained an act of parliament to this purpose, "Quod omnes illi comites "& barones regni Angliæ, quibus ipse rex dignatus est brevia summonitionis derigere, venirent "ad parliamentum, & non alii nisi forte dominus "rex alia brevia eis dirigere voluisset."

(*f*) Dufresne in voce Par.

Whether

Whether this extravagant constitution had the sanction of a legal parliament may be justly questioned; or if it had, whether the donation of the liberties and properties of the nation by those who were entrusted to defend them was not void, as void as an act of a trustee contrary to his trust is: for, as Tacitus says, "(g) Apud sapientes "cassa habebantur quæ neque dari neque accipi "salva republica poterant." However, the extent of this monstrous provision, and it's real or supposed effects shall be briefly touched.

1. This clause did not enable the king to make any new Barons, but only to select whom he pleased out of those, who before had all an equal right to come to parliament, that is, out of the Majores Barones. This seems also to have been the sense of lord Coke, who says, the writ does not entitle one to the privilege of a Baron, till the party has once sat in parliament (b); for the peers are the only judges to determine who are capable of being summoned, as of their body; and therefore till they had allowed the person summoned to be one of the greater Barons, by receiving him into their number, no peerage was supposed to be gained by the writ.

2. It has been said, that this clause introduced a new species of Barons, who are commonly called Barons by Writ. This notion was first questioned by the very learned Mr. Prynn, and from him borrowed by others: that learned author asserts, that these Barons, who are called Barons by Writ, were really Barons by Tenure; the following observations do, I conceive, evince the truth of his opinion.

1. The nature of every writ being only to command the person to whom it was directed, to do

(g) Tacitus, p. 458.
(b) Coke on Littleton, 166. 12 Coke, 70.

some

something he was before under a legal obligation to perform, it seems a very extravagant thing, to say it was creative of a new right.

2. All the peerages that are said to be created by the writs, are agreed to be descendable to the heir general, which shews, that the baronies were understood to be annexed to the land which is always presumed to be fee simple.

3. However modern practice may have varied, yet in former times all the persons who had writs were immediate tenants of the crown, and consequently Barons in the old sense of the word: so that the barony could not, (though the seat in parliament might) be gained by the writ.

4. If the writ could create a peerage, why might not any of the superior nobility be so made? Yet none ever suspected such a thing.

5. The calling the peers eldest sons to parliament, by some barony first in their fathers (for none were ever called to the House of Lords by a title foreign to their famalies) seems to be grounded on the same reason; for, that barony is either actually, or at least by intendment of law, antecedently by the father given to the son: so that in such case the son being a Baron in the eye of the law, was equally capable, as well as any other Baron, of receiving the writ, and in consequence thereof, becoming a lord of parliament.

The crown, under the specious pretence of the forecited provision of Henry III. exercised a power of sending writs, sometimes to some Barons, at other times to others, according as the several factions or parties prevailed; this is the true reason of the variety that may be observed in the summons to parliament: not as a late author has pretended, from many persons being summoned only as assistants.

This exorbitant power of the crown, as it was first exercised in times of the utmost confusion, so

was

was it gradually disused, and a method taken to fix the members of the legislature, in imitation of what had long before been practised in the creating Earls, by making Barons, with a right to sit in parliament, by patent. This practice was first begun in Richard II's time, in the person of John Beauchamp, Baron of Kidderminster. Hence the nature of these patents, which have been before enquired into, with respect to the creation of Earls, is also considerable in this place: but as most of what has been said is equally applicable to the Barons patents, I shall only here mention one argument, that the state of affairs in this period of time affords, and what a late author has wrote in particular concerning the Barons.

If the provision of Henry III. is admitted to be an act of parliament, as the writ or patent of one king cannot divest his successor of a right given by parliament, it must necessarily follow, that either the patents after that time were so many acts of parliament, or else, that they did not convey an hereditable right to a seat in parliament: one of these propositions is manifestly true, which let the learned reader judge.

A late author, to prove the parliamentary creation of Barons, has insisted on three acts of parliament passed in Henry VIII's time; his expressions are confused, therefore least I should any ways injure his sense, I will here insert his own words, "Consistent with which notion of the law (viz. "that no power but that of king and parliament "can create a Barony) Henry VIII. who cannot "justly be suspected of being a prince willing to "diminish his prerogative, did derive his exercise "of this power from an act of parliament; for in "31 Henry VIII. the king's own manor of "Hampton-Court was by act of parliament made "an honour, by which act, the manors of Byflete

"and

"and Weybridge, in Com. Surr. and several "other manors, are made part and parcel of that "honour: so likewise in 33 Henry VIII. other "acts to the same purpose passed in favour of the "manor of Ampthill and Grafton, by which they "were made honours. And I believe that no in-"stance can be given from the conquest unto this "day, of any honours being erected otherwise "than in parliament."

On this paragraph the reader will observe,

1. That the first act of parliament was for making Henry VIII's own manor an honour; and unless he had an intent to part with that, or had a mind to add the title of Baron of Hampton-Court to that of King of England, the argument proves nothing.

2. By this author's manner of writing, it should seem that he had seen these three acts, and found something in them that gave at least a colour for his supposition; but sure I am, in one of them, which I have seen and perused, no such thing appears, and I am well assured nothing does in the other two.

3. One would imagine by this kind of masoning, that Henry VIII. had met with some difficulty in the advancing persons he intended to honour, and took this indirect way of compassing his end; whereas nothing is less true: for he never was on any occasion obstructed in such design; many he advanced to the peerage, but not one person by the grant of these honours.

4. Two of these honours (viz. Ampthill and Grafton) did in time become the property of several subjects, yet did they not assume the titles of Barons of these places.

From this period of time to the present, (the exclusion of abbots and priors, on the reformation, only excepted) the legislative power has been vested

as

as it now is; so we may, I think, safely conclude, that from the earliest accounts of time, our ancestors in Germany were a free people, and had a right to assent, or dissent to all laws; that that right was exercised, and preserved under the Saxon and Norman kings even to our days: and may an uninterrupted exercise thereof (for the right itself can never be extinguished) continue till time shall be no more.

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FINIS.

ERRATA.

PAGE 7. to the reference at the bottom add *Jo. Mag. Historic. Got.* 317. P. 13. l. 11. after Underſtanding, add *of*. P. 42. l. 8. for Deſtribution, *r. Deſolution*. Same page, at the end of the 31ſt line, there ſhould be a note of reference, and at the bottom of the page there ſhould be inſerted, *Vide etiam Hick. Diſſert. Epiſt.* p. 5. 59. P. 46, after the references inſerted with the letter *F*, add, *Vide* Brady's *Preface to his Treatiſe of Boroughs*, p. 2. P. 83. l. 2. for inſtituted, *r. entitled*. P. 86. l. 4. for King, *r. Kings*. P. 89. l. 18. after the word *Borough*, there ſhould be a reference, and at the bottom of the page add *Paulus Diaconus*, l. 12. p. 356. *Brady*, &c.